

Committee (SSC) who are forwarded this proposal by the FFWCC, along with a copy of the administrative record for the state actions in approval of the state rule.

A copy of the agenda can be obtained by contacting the Council (*see* addresses above).

Although non-emergency issues not contained in the agenda may come before the Spiny Lobster AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

The listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (*see* ADDRESSES) by June 25, 2002.

Dated: June 14, 2002.

**Virginia M. Fay,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 02-15486 Filed 6-18-02; 8:45 am]  
BILLING CODE 3510-22-S

#### COMMODITY FUTURES TRADING COMMISSION

##### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:**  
Commodity Futures Trading Commission.

**TIME AND DATE:** 11 a.m., Friday, July 5, 2002.

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

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:**  
Jean A. Webb, 202-418-5100.

**Jean A. Webb,**  
*Secretary of the Commission.*  
[FR Doc. 02-15536 Filed 6-17-02; 9:10 am]  
BILLING CODE 6351-01-M

#### COMMODITY FUTURES TRADING COMMISSION

##### Sunshine Act; Meeting

**AGENCY HOLDING THE MEETING:**  
Commodity Futures Trading Commission.

**TIME AND DATE:** 11:00 a.m., Friday, July 12, 2002.

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

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:**  
Jean A. Webb, 202-418-5100.

**Jean A. Webb,**  
*Secretary of the Commission.*  
[FR Doc. 02-15537 Filed 6-17-02; 8:45 am]  
BILLING CODE 6351-01-M

#### COMMODITY FUTURES TRADING COMMISSION

##### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:**  
Commodity Futures Trading Commission.

**TIME AND DATE:** 11:00 a.m., Friday, July 19, 2002.

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

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:**  
Jean A. Webb, 202-418-5100.

**Jean A. Webb,**  
*Secretary of the Commission.*  
[FR Doc. 02-15538 Filed 6-17-02; 9:10 am]  
BILLING CODE 6351-01-M

#### COMMODITY FUTURES TRADING COMMISSION

##### Sunshine Act; Meeting

**AGENCY HOLDING THE MEETING:**  
Commodity Futures Trading Commission.

**TIME AND DATE:** Friday, July 26, 2002.

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

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:**  
Jean A. Webb, 202-418-5100.

**Jean A. Webb,**  
*Secretary of the Commission.*  
[FR Doc. 02-15539 Filed 6-17-02; 9:10 am]  
BILLING CODE 6351-01-M

#### COMMODITY FUTURES TRADING COMMISSION

**In the Matter of the New York Mercantile Exchange, Inc. Petition for Treatment of Floor Brokers and Floor Traders as Eligible Commercial Entities and Eligible Contract Participants Pursuant to Sections 1a(11)(C) and 1a(12)(C) of the Commodity Exchange Act and the Intercontinental Exchange, Inc. Petition for Treatment of Floor Brokers and Floor Traders as Eligible Commercial Entities Pursuant to Section 1a(11)(C)**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Request for comment.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is requesting comment regarding a New York Mercantile Exchange, Inc. ("NYMEX" or "Exchange") petition requesting a Commission determination that Exchange members who are registered with the Commission as either floor brokers or floor traders fall within the definitions of "eligible contract participant" as that term is defined in Section 1a(12) of the Commodity Exchange Act ("Act") and "eligible commercial entity" as that term is defined in Section 1a(11) of the Act. Subject to trading restrictions and Exchange oversight as set forth in the petition, NYMEX asks that its floor brokers and floor traders (collectively referred to hereafter as "floor members"), when they act for their own accounts and are guaranteed by an Exchange clearing member that is registered as a futures commission merchant ("FCM"), be permitted to: (1) Act as an eligible contract participant and enter into certain specified over-the-counter ("OTC") transactions in exempt commodities, and (2) act as an eligible commercial entity and enter into certain specified transactions in exempt commodities on exempt commercial markets. The Commission is also requesting comment with respect to an Intercontinental Exchange, Inc. ("Intercontinental Exchange") petition that requests that, subject to certain restrictions, the category of eligible commercial entity be expanded to include floor brokers and floor traders registered with the Commission or with the U.K. Financial Services Authority trading on an exempt commercial market. The Commission particularly asks for comments with respect to whether any response to the petitions should be tailored specifically to NYMEX and the Intercontinental

Exchange and to the narrow circumstances presented in the petitions or whether a response should be more broadly based and, thus, also applicable to other entities.

**DATES:** Comments must be received by July 5, 2002.

**ADDRESS:** Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to 202-418-5521 or, by e-mail to [secretary@cftc.gov](mailto:secretary@cftc.gov). Reference should be made to "ECP/ECE Petitions."

**FOR FURTHER INFORMATION CONTACT:**

Duane C. Andresen, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Telephone: 202-418-5492. E-mail: [dandresen@cftc.gov](mailto:dandresen@cftc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Statutory Background**

Section 1a(12) of the Act, as amended by the Commodity Futures Modernization Act of 2000 ("CFMA"), Pub. L. 106-554, which was signed into law on December 21, 2000, defines the term "eligible contract participant" ("ECP") by listing those entities and individuals considered to be ECPs. ECPs that enter into OTC transactions<sup>1</sup> in an "excluded commodity" or an "exempt commodity," as those terms are defined by the Act,<sup>2</sup> are not subject to various requirements of the Act.<sup>3</sup> The ECP

definition directly includes floor brokers and floor traders only to the extent that the floor broker or floor trader acts "in connection with any transaction that takes place on or through the facilities of a registered entity or an exempt board of trade, or any affiliate thereof, on which such person regularly trades."<sup>4</sup>

The Act, however, gives the Commission discretion to expand the ECP category as it deems appropriate. Specifically, Section 1a(12)(C) provides that the list of entities defined as ECPs shall include "any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person."

Similarly, Section 1a(11) of the Act defines the term "eligible commercial entity" ("ECE") by listing those ECPs that are qualified to be ECEs. Floor brokers and floor traders, even if determined to fall within the definition of ECP, do not qualify as ECEs, under the ECE definition, for the purpose of engaging in OTC transactions. The Act, however, gives the Commission discretion to expand the ECE category. Specifically, Section 1a(11)(C) provides that the list of entities defined as ECEs shall include "such other persons as the Commission shall determine appropriate and shall designate by rule, regulation, or order." A determination under this provision that floor brokers and floor traders are considered ECEs would permit the floor brokers and floor traders to enter into transactions in exempt commodities on exempt commercial markets ("ECM") pursuant to Section 2(h)(3) of the Act.<sup>5</sup>

**II. Eligible Contract Participants**

**1. The NYMEX Petition**

By letter dated May 23, 2002, NYMEX submitted a petition for a Commission interpretation pursuant to Section 1a(12)(C) of the Act.<sup>6</sup> Specifically,

in exempt commodities are generally not subject to any provisions of the Act other than certain anti-fraud and anti-manipulation provisions.

<sup>4</sup> Section 1a(12)(A)(x) of the Act.

<sup>5</sup> Under Section 2(h)(3), ECMs are markets that limit themselves to transactions: (1) in exempt commodities, (2) entered into on a principal-to-principal basis by ECEs, and (3) executed or traded on an electronic trading facility. An ECM is not a registered entity, but is required to notify the Commission of its intention to operate an electronic facility in reliance on the exemption set forth in Section 2(h)(3). The notification of operation as an ECM must include several certifications and, pursuant to Commission Regulation 36.3(c)(3), a representation that it will require each participant to comply with all applicable law and that it has a reasonable basis for believing that authorized participants are ECEs. ECM transactions are subject to certain of the Act's anti-fraud and anti-manipulation provisions.

<sup>6</sup> As discussed below, NYMEX also requested a Commission interpretation pursuant to Section

NYMEX, acting on behalf of Exchange floor members and member clearing firms, requested that the Commission make a determination pursuant to Section 1a(12)(C) of the Act that floor members, when acting in a proprietary capacity, may enter into certain specified OTC transactions in exempt commodities if such Commission registrants have obtained a financial guarantee for such transactions from an Exchange clearing member that is registered with the Commission as an FCM. NYMEX suggested that the permissible OTC transactions be limited to trading in a commodity that either (1) is listed only for clearing on the Exchange,<sup>7</sup> or (2) is listed for trading and clearing at the Exchange and where Exchange rules provide for the exchange of futures for swaps ("EFS") in that contract.<sup>8</sup> NYMEX further proposed that such transactions would be subject to additional conditions and restrictions detailed in the petition and described below.

**A. Public Interest Considerations**

In its petition, the Exchange states that the requested determination is best considered against the overall context of the connection between the OTC and

1a(11)(C) of the Act. By letter dated June 3, 2002, NYMEX supplemented its petition.

<sup>7</sup> By letter dated May 24, 2002, NYMEX filed rule changes that would implement an initiative to provide clearing services for specified energy contracts executed in the OTC markets. NYMEX certified that the rules comply with the Act and Commission Regulation 40.6. Under the initiative, NYMEX will list 25 contracts that will be entered into OTC and accepted for clearing by NYMEX, but will not be listed for trading on the Exchange. In connection with the NYMEX initiative, on May 30, 2002, the Commission issued an Order pursuant to Section 4d of the Act. The Order provides that, subject to certain terms and conditions, the NYMEX Clearing House and FCMs clearing through the NYMEX Clearing House may commingle customer funds used to margin, secure, or guarantee transactions in futures contracts executed in the OTC markets and cleared by the NYMEX Clearing House with other funds held in segregated accounts maintained in accordance with Section 4d of the Act and Commission Regulations thereunder.

In its petition, NYMEX suggested a further limitation on floor members' permissible OTC transactions by not permitting, at this time, any OTC transactions on the three electricity commodities contracts included among the 25 identified contracts.

<sup>8</sup> EFS transactions are permitted at the Exchange pursuant to NYMEX Rule 6.21A, Exchange of Futures for, or in Connection with, Swap Transactions. The swap component of the transaction must involve the commodity underlying a related NYMEX futures contract, or a derivative, by-product, or related product of such a commodity. In furtherance of its effort to permit OTC clearing at the Exchange, NYMEX amended the rule to include as eligible EFS transactions "any contract executed on the Exchange that the Exchange has designated as eligible for clearing at the Exchange." Currently, NYMEX permits EFS transactions in the following commodities: Natural Gas, NYMEX Brent Crude Oil, and Aluminum.

<sup>1</sup> OTC transactions are transactions that are not executed on a trading facility. As defined in Section 1a(33)(A) of the Act, the term "trading facility" generally means "a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions by accepting bids and offers made by other participants that are open to multiple participants in the facility or system."

<sup>2</sup> Section 1a(14) defines the term "exempt commodity" to mean a commodity that is not an excluded commodity or an agricultural commodity. Section 1a(13) defines that term "excluded commodity" to mean, among other things, an interest rate, exchange rate, currency, credit risk or measure, debt instrument, measure of inflation, or other macroeconomic index or measure. Although the term "agricultural commodity" is not defined in the Act, section 1a(4) enumerates several agricultural-based commodities and products. The broadest types of commodities that fall into the exempt category are energy and metals products.

<sup>3</sup> Under Section 2(d)(1) of the Act, ECPs that enter into OTC transactions in excluded commodities are generally not subject to any provisions of the Act. Under Section 2(g) of the Act, ECPs that individually negotiate OTC transactions in exempt or excluded commodities are generally not subject to any provision of the Act. Under Section 2(h)(1) of the Act, ECPs that enter into OTC transactions

exchange markets, and that it is good public policy for the Commission to permit the strengthening of these ties when it is possible to do so. The Exchange includes the requested determination among a number of initiatives intended to better serve the OTC community as part of the Exchange's goal of becoming the "one-stop shop for the entire energy industry." The petition states that NYMEX has concluded that the ability of its floor members to trade OTC transactions pursuant to an FCM guarantee, particularly OTC swaps involving NYMEX or NYMEX "look-alike" products, is a pivotal component, for the four reasons described below, of the Exchange's business strategy to better serve its customers.

First, NYMEX states that the ability of its floor members to enter into OTC swaps would enhance their function in providing liquidity to the Exchange's markets. Floor members would increase their access to trading information in the "upstairs" or OTC markets, and this increased informational flow would assist floor members in maintaining tight bid-ask spreads with respect to Exchange-traded products that compete or have strong price relationships with OTC products. Second, NYMEX states that the ability of its floor members to make tight markets in new Exchange products that would compete against the standardized look-alike contracts traded in the OTC markets would be enhanced. In this regard, the petition states that 80 to 90 percent of energy swap transactions involve standardized economic terms.

Third, NYMEX states that its floor members would be able to enter into EFS transactions with OTC counterparties, thereby expanding the pool of potential counterparties for OTC market participants and facilitating liquidity in the OTC marketplace. Finally, with respect to the clearing of OTC transactions, the Exchange intends that the open positions in futures contracts created by the exchange of an OTC swap for a NYMEX future would be offset by an opposite transaction in the OTC market, thus providing a larger pool of market participants who would enter into a transaction initiating or liquidating a position on the Exchange.

With respect to the economic impact on OTC markets, the petition states that permitting floor members to trade OTC transactions would increase competition and efficiency, enhance price discovery, and reduce the liquidity risk and the resultant increased market risk that arises from artificial barriers to entry in the markets. NYMEX states that floor members participating in the OTC

markets would perform the same functions they perform in the Exchange market including, among others, enhancing price discovery through the speed and efficiency of market adjustment to new fundamentals and facilitating adjustment of the market price to new information.

#### B. NYMEX's Analysis of the ECP Definition

In its petition, NYMEX contends that Section 1a(12) of the Act supports its requested treatment of floor members as ECPs for a number of reasons. First, NYMEX states that the treatment of floor brokers and floor traders under the Section 1a(12) ECP definition appears to be inconsistent in that it treats floor brokers and floor traders differently based upon how they organize their businesses. Specifically, floor brokers and floor traders who operate as natural persons are only considered ECPs if they satisfy a total asset standard.<sup>9</sup> By comparison, floor members that are organized as partnerships or proprietorships are considered ECPs if they are guaranteed by a specified entity and are not required to meet any total asset requirement.<sup>10</sup> The Exchange represents that floor trader registrations are generally made in the name of the individual and that exchange membership or seat ownership historically has been held in the name of one individual.<sup>11</sup>

<sup>9</sup> Section 1a(12)(A)(xi) provides that an individual who meets either of two total asset tests is an ECP. An individual must either have total assets in an amount in excess of \$10,000,000 or of \$5,000,000 and enter "into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual."

<sup>10</sup> Section 1a(12)(A)(v) provides that a corporation, partnership, proprietorship, organization, trust, or other entity that meets one of three tests is an ECP. The entity must either (1) have total assets exceeding \$10,000,000; (2) have its obligations guaranteed or otherwise supported by (subject to total assets or other requirements) a financial institution, insurance company, investment company, or commodity pool, or governmental entity; or (3) have a net worth exceeding \$1,000,000 and enter "into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset owned or liability incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business."

<sup>11</sup> As indicated above, the only provision of the ECP definition that specifically refers to floor brokers or floor traders is Section 1a(12)(A)(x). NYMEX's argument on this point is premised on the assumption that floor brokers and floor traders may alternatively qualify as ECPs under provisions of the ECP definition that specifically refer to "a corporation, partnership, proprietorship, organization, trust, or other entity" (Section 1a(12)(A)(v)) and to "an individual" (Section 1a(12)(A)(xi)). In publishing the request for comment on NYMEX's petition, the Commission is

Second, the petition states that the treatment of floor brokers and floor traders under Section 1a(12) is inconsistent with the treatment of brokers or dealers or foreign persons (performing similar roles or functions subject to foreign regulation) who are natural persons or proprietorships. The latter entities may be considered to be ECPs by meeting either the total assets test of Section 1a(12)(xi) or satisfying one of the provisions of 1a(12)(v). Thus, Section 1a(12) permits a broker or dealer or foreign person operating as a natural person, but not a floor broker or floor trader similarly operating, to trade OTC products pursuant to Section 1a(12)(v) with a guarantee from one of the specified entities without meeting any total asset requirements.

Third, NYMEX contends that floor members with FCM guarantees should be considered ECPs because the Act permits other entities to use guarantees as a substitute for a total assets requirement in meeting the ECP definition. Specifically, NYMEX states that the Act permits a corporation, partnership, proprietorship, organization, trust, or other entity to obtain a guarantee or support via a letter of credit from a financial institution, insurance company, investment company, commodity pool, or governmental entity. Finally, NYMEX argues that it is reasonable for floor brokers and floor traders to rely on FCMs as guarantors. Under Section 1a(12)(A)(v), "a corporation, partnership, proprietorship, organization, trust, or other entity" may be considered an ECP if it is guaranteed by a commodity pool with more than \$5 million in total assets. NYMEX points out that commodity pools generally are not in the business of conducting risk management for or providing guarantees in connection with trading in the OTC markets. NYMEX states that if commodity pools are allowed to provide guarantees, then FCMs, who are in the business of monitoring trading by the Exchange members that they guarantee, should be permitted to provide such guarantees for floor members. NYMEX states that its rules provide that each Exchange clearing member registered as an FCM must maintain minimum working capital of at least \$5 million.<sup>12</sup>

neither accepting nor rejecting the Exchange's interpretation of the ECP definition.

<sup>12</sup> Pursuant to NYMEX Rule 9.21(B), each clearing member registered with the Commission as an FCM must have and maintain minimum working capital equal to or in excess of the greater of \$5 million or the amount prescribed in Commission Regulation 1.17.

### C. Trading Restrictions and Exchange Oversight

In its petition, NYMEX represents that it would have appropriate compliance systems in place to monitor OTC trading by Exchange floor members. Because all the permissible OTC trading subsequently would be cleared at the Exchange, NYMEX would be able to obtain information concerning the OTC transactions as part of a review of the EFS transaction bringing the transaction to the Exchange for clearing. Failure to comply with a request to provide such information pursuant to the Exchange's EFS rules would result in a referral to the Exchange's Business Conduct Committee for further action.

NYMEX also suggested that, consistent with the standards which already apply to floor members with respect to their trading on the Exchange, the Commission should provide that floor members' transactions in the permissible contracts that are not executed on a trading facility be executed only pursuant to the Section 2(h)(1) exemption.<sup>13</sup> As indicated above, all Section 2(h)(1) transactions would be subject to the Commission's anti-fraud and anti-manipulation prohibitions.<sup>14</sup> Finally, the Exchange represented that it would agree, as a condition for participating in the OTC markets, to limit OTC trading by floor brokers and floor traders such that the counterparties to their trades must not be floor brokers or floor traders for contracts that are listed for trading on the Exchange, such as in connection with an OTC natural gas swap to be exchanged for a futures position in the NYMEX Natural Gas futures contract.

### III. Eligible Commercial Entities

#### 1. The NYMEX Petition

In its petition, NYMEX also requested that the Commission make a determination pursuant to Section 1a(11)(C) of the Act that floor members, when acting in a proprietary capacity, may also be considered to be ECEs when they enter into certain specified transactions. Such a determination would permit NYMEX floor members to enter into transactions in exempt commodities on ECMs pursuant to Section 2(h)(3) of the Act.<sup>15</sup> NYMEX stated that floor members permitted to enter into transactions as ECEs would be

subject to the same previously-described conditions and restrictions applicable to floor members permitted to enter OTC transactions as ECPs, except that NYMEX did not propose that floor brokers and floor traders acting as ECEs be subject to the counterparty limitation. NYMEX states that it does not intend to limit floor brokers and floor traders acting as ECEs and trading on ECMs to counterparties other than floor brokers and floor traders because ECMs may permit transactions to be conducted anonymously between counterparties and the Exchange would have no effective means to ensure compliance with a counterparty restriction.<sup>16</sup>

As additional support for its request for a determination that floor members be able to trade as ECEs on ECMs, NYMEX states that floor members, if determined to be ECPs, would meet the requirements of Section 1a(11)(A) of the Act in that the floor members provide risk management and market-making activities in energy and metals derivatives products. NYMEX further stated that allowing floor members with an FCM guarantee to execute transactions as ECEs on ECMs would simply be an extension of the services that floor members currently provide to users of NYMEX's markets.

#### 2. The Intercontinental Exchange Petition

By letter dated June 3, 2002, the Intercontinental Exchange<sup>17</sup> requested that the Commission issue an Order pursuant to Section 1a(11) of the Act that would expand the ECE category to include floor brokers and floor traders registered in the U.S. as such or with the U.K. Financial Services Authority ("FSA"). Intercontinental Exchange stated that including floor brokers and floor traders as ECEs would be consistent with the CFMA and would recognize their value as both liquidity providers and dealers and market makers.

In its petition, Intercontinental Exchange commented that the Commission has previously included floor brokers and floor traders in the

definition of ECE as it relates to trading on a Derivatives Transaction Execution Facility ("DTEF"). Specifically, Commission Regulation 37.1(b) states that, for the purpose of DTEF trading, "the term 'eligible commercial entity' means, and shall include, in addition to a party or entity so defined in Section 1a(11) of the Act, a registered floor trader or floor broker trading for its own account, whose trading obligations are guaranteed by a registered futures commission merchant." The petition states that there is no meaningful distinction between allowing floor brokers and floor traders to trade as ECEs on a DTEF and allowing them to trade as ECEs on an ECM.<sup>18</sup>

The petition states that, in addition to U.S. registered floor brokers and floor traders, the ECE definition should include local member floor traders who are authorized persons under the U.K.'s Financial Services and Markets Act of 2000 ("FSMA"). As described in the petition, local members can be individuals or corporations. To become authorized persons they must, among other things, meet fitness and proper standards, have competent and prudent management, and conduct their affairs with due skill, care, and diligence. An authorized person is subject to FSA rules, including capital and conduct of business requirements. Intercontinental Exchange states that the IPE monitors the activities of local members and has the authority to sanction them in the event of improper conduct. In addition, Intercontinental Exchange represents that the IPE would cooperate with the Intercontinental Exchange and with any other exchange on which its local members may trade or on which its products or similar products may be traded. Such cooperation would include intermarket surveillance.

In the petition, Intercontinental Exchange proposed that the following be included in a definition of ECE for trading on ECMs:

(1) U.S. registered floor brokers or floor traders or a U.K. authorized local member floor trader (the floor broker or floor trader is not required to have any connection or experience trading in the underlying commodity);

<sup>13</sup> To qualify for the Section 2(h)(1) exemption, the transaction must: (1) Be in an exempt commodity, (2) be entered into by ECPs, and (3) not be entered into on a trading facility.

<sup>14</sup> See *supra* note 3.

<sup>15</sup> NYMEX represents that all of the permissible trading on ECMs would subsequently be cleared at the Exchange.

<sup>16</sup> ECMs that do not provide for the clearing of transactions, however, may require traders to pre-approve those counterparties against whom they will accept bids or offers. Thus, it may be possible for floor brokers or floor traders to specify the potential entities that are acceptable counterparties.

<sup>17</sup> The Intercontinental Exchange operates an OTC commodities trading platform for energy and metals and is itself an ECM. Intercontinental Exchange submitted its notice of operation as an ECM to the Commission on December 27, 2001. Intercontinental Exchange also owns the International Petroleum Exchange ("IPE"), a U.K. futures exchange for the trading of energy futures products.

<sup>18</sup> DTEFs are registered with the Commission and generally must meet various standards of operation set forth in Section 5a of the Act and Part 37 of the Commission's Regulations and are subject to the Commission's regulatory oversight. By comparison, ECMs are exempt from Commission regulatory oversight. While ECMs must submit to the Commission a notice of operation that satisfies the filing requirements of Section 2(h)(5) of the Act and Commission Regulation 36.3, ECMs are not "registered with, or designated, recognized, licensed or approved by the Commission." See Section 2(h)(5) of the Act.

(2) the floor broker or floor trader must be a member of a designated contract market ("DCM") or a U.K. futures exchange or otherwise have trading privileges on a DCM or a U.K. futures exchange;

(3) the floor broker or floor trader must have as a part of its business the business of acting as a floor broker or floor trader; and

(4) the floor broker or floor trader is an ECP or, if the floor broker or floor trader is not an ECP, its trades must be guaranteed by a clearing member of a U.S. or U.K. recognized clearing organization.

#### IV. Request for Comment

The Commission generally invites public comment on both the NYMEX and Intercontinental Exchange petitions and on whether the Commission should determine that floor brokers and floor traders are ECPs and/or ECEs and, therefore, be permitted to execute transactions in exempt commodities in certain markets. The Commission also invites public comment on what, if any, standards and conditions should be applied in the event of such a determination. The Commission particularly asks for comments with respect to whether any response to the petitions should be tailored specifically to NYMEX and the Intercontinental Exchange and to the narrow circumstances presented in the petitions or whether a response should be more broadly based and, thus, also applicable to other entities. Finally, the Commission requests comment on the following aspects of the NYMEX and Intercontinental Exchange petitions.

1. As noted above, NYMEX's petition would limit OTC trading by floor brokers and floor traders acting as ECPs such that the counterparties to their trades must not be floor brokers or floor traders. NYMEX stated that it did not intend for this limitation to apply to floor brokers and floor traders acting as ECEs and trading on ECMs. In support of this determination, NYMEX stated that the Exchange could not ensure compliance with the counterparty restriction because ECMs may permit transactions to be conducted anonymously between counterparties. The Commission understands, however, that at some ECMs, traders have the capability of specifying the entities that are acceptable counterparties. In light of this capability, the Commission asks whether it would be reasonable and prudent to maintain a restriction on eligible counterparties, at least with respect to ECMs that provide for such a counterparty pre-approval mechanism.

2. The Commission notes that the NYMEX and Intercontinental Exchange petitions reflect different terms and conditions with respect to floor brokers and floor traders acting as ECEs. Based upon these distinctions, the Commission requests comments regarding whether the transactions that could be entered into by floor brokers and floor traders as ECEs on ECMs should be limited to any of the following: (a) Specifically identified contracts; (b) transactions that would be cleared; (c) commodities in which the floor broker or floor trader had trading expertise; (d) transactions for which the floor broker or floor trader was guaranteed by an Exchange clearing member; or (e) in some other way.

3. In its petition, Intercontinental Exchange states that there would be no meaningful distinction between allowing floor brokers and floor traders to trade as ECEs on a DTEF, as the Commission has already permitted, as compared to trading as ECEs on an ECM. The Commission requests comment on this assertion, and particularly on whether there should be any distinction in the treatment of floor brokers and floor traders as ECEs based upon the different regulatory regimes applicable to DTEFs and ECMs.<sup>19</sup>

4. In addition to U.S. registered floor brokers and floor traders, Intercontinental Exchange's petition requests ECE treatment for U.K. authorized local member floor traders. Intercontinental Exchange's petition also broadly describes the qualification requirements that such floor traders are subject to under the FSMA. The Commission seeks general comment on whether ECE treatment should be extended to any non-U.S. registrants and, if so, what standards the Commission should use to evaluate the qualifications of such persons.

Issued in Washington, DC on June 13, 2002 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02-15372 Filed 6-18-02; 8:45 am]

**BILLING CODE 6351-01-P**

#### DEPARTMENT OF DEFENSE

##### Department of the Air Force

##### HQ USAF Scientific Advisory Board

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice of Meeting.

**SUMMARY:** Pursuant to Public Law 92-463, notice is hereby given of the forthcoming meeting of the AF Scientific Advisory Board Predictive Battlespace Awareness (PBA) Executive Panel and Panel Chairs. The purpose of the meeting is to allow the panel chairs to report to the executive panel on the status of their portions of the PBA study; to receive the Joint Staff/J2 perspective on PBA; and to plan the remainder of the study. Because the briefings and discussion are classified, this meeting will be closed to the public.

**DATES:** 21 May 02 (0800-1630 EST).

**ADDRESSES:** A-Team Conference & Innovation Center, 1560 Wilson Blvd., Suite 400, Rosslyn, VA 22209.

**FOR FURTHER INFORMATION CONTACT:** Colonel Marian Alexander, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330-1180, (703) 697-4811.

**Pamela D. Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

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**BILLING CODE 5001-05-P**

#### DEPARTMENT OF ENERGY

##### Environmental Management Site-Specific Advisory Board, Rocky Flats

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

**DATE:** Thursday, July 11, 2002, 6 p.m. to 9:30 p.m.

**ADDRESS:** Jefferson County Airport Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

**FOR FURTHER INFORMATION CONTACT:** Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420-7855; fax (303) 420-7579.

##### SUPPLEMENTARY INFORMATION:

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

##### Tentative Agenda

1. Quarterly update on Rocky Flats issues, provided by a representative

<sup>19</sup> See supra note 18.