

the education, stewardship, and research goals of the reserve; and the plans for future land acquisition and facility development to support reserve operations. The reserve management goals and objectives can be categorized within the following five management challenges: Public use, habitat and species management, watershed land use, cultural preservation and interpretation, and global processes. These issues can be directly or indirectly linked to anthropogenic land use of increasing population densities accompanied by increasing development, recreation and economic pressures.

The Guana Tolomato Matanzas Environmental Education Center is a notable addition since the last management plan and serves as the administrative, education, research, and stewardship facility for the northern component of the Reserve. The facility will provide an opportunity for further outreach to the community and serve as a center of excellence for regional science, education and stewardship forums.

This management plan calls for a boundary expansion incorporating 8,865 acres of publicly owned land in the southern component of the reserve. Approximately 4,166 acres of the Faver-Dykes State Park adding to the 1,333 acres of Faver-Dykes State Park incorporated at designation. The additional park lands will provide new resources and allow for an extension of the existing partnership. Additionally, 4,699 acres of the Matanzas State Forest will be added to the Reserve boundary. This property will be incorporated to further protect the last remaining undisturbed salt marsh within the Reserve and is part of a 16,000 acre continuous conservation corridor. This land is comprised 75% by upland pine and 25% by wetlands. The area serves as an important bird habitat and contains significant natural and cultural resources. These additions will bring the total Reserve acreage to 73,352 acres protected for long-term research, education and stewardship.

**FOR FURTHER INFORMATION CONTACT:** Erica Seiden at (301) 563-1172 or Laurie McGilvray at (301) 563-1158 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910. For copies of the Guana Tolomato Matanzas, FL Management Plan revision, visit <http://www.dep.state.fl.us/coastal/sites/gtm/plan/>.

Dated: June 30, 2008.

**David M. Kennedy,**

*Director, Office of Ocean and Coastal Resource Management National Oceanic and Atmospheric Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### National Estuarine Research Reserve System

**AGENCY:** Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

**ACTION:** Notice of Public Comment Period for the Revised Management Plan for the Padilla Bay National Estuarine Research Reserve.

**SUMMARY:** Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce is announcing a thirty day public comment period on the revised management plan for the Padilla Bay National Estuarine Research Reserve.

The Padilla Bay National Estuarine Research Reserve is located in Skagit County, Washington. The Reserve was designated in 1980 pursuant to Section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461. The reserve is revising their plan pursuant to 15 CFR. The submission of this revised plan sets a course for successful implementation of the goals and objectives of the reserve. New facilities, a focus on broad Puget Sound issues and climate change, and updated programmatic objectives are notable revisions to the previous approved management plan.

The revised management plan outlines the administrative structure; the education, stewardship, and research goals of the reserve; and the plans for future land acquisition and facility development to support reserve operations. Since 2002, the reserve has added a coastal training program that delivers science-based information to key decision makers in Washington State. The reserve has realized nearly all aspects of the original plan and expanded its programs dramatically since the original plan. The reserve has completed major facility expansion and

renovation projects that provide classrooms, lab space, exhibit space, dormitory, and office space. The reserve has expanded, but not yet completed, its ownership of in-holdings within its boundary and increased staff which have resulted in the implementation of research, education, stewardship, GIS, and volunteer activities at the reserve.

This management plan calls for continued land acquisition within its boundaries from willing sellers, implementation of a habitat mapping and change plan, responsiveness to existing and emerging regional partnerships focusing on the management of Puget Sound, a focus on climate change within all reserve programs, implementation of the National Estuarine Research Reserve's K-12 Estuarine Education Program and continued implementation of the graduate research fellowship, coastal training, and system-wide monitoring programs.

#### FOR FURTHER INFORMATION CONTACT:

Nina Garfield at (301) 563-1171 or Laurie McGilvray at (301) 563-1158 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910. For copies of the Padilla Bay Management Plan revision, visit <http://www.padillabay.gov/>.

Dated: June 30, 2008.

**David M. Kennedy,**

*Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.*

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## COMMODITY FUTURES TRADING COMMISSION

### Request To Exempt Certain Over-the-Counter Swaps From Certain of the Requirements Imposed by Commission Regulation 35.2, Pursuant to the Authority in Section 4(C) of the Commodity Exchange Act

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of request for comment on exemption request.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is requesting comment on whether to exempt certain over-the-counter ("OTC") swaps from certain of the requirements otherwise imposed by Commission Regulation 35.2. Specifically, the petitioners request authority to clear certain agricultural

swaps. This exemption has been requested by the Chicago Mercantile Exchange Inc. ("CME"), a registered derivatives clearing organization ("DCO"), and the Board of Trade of the City of Chicago, Inc. ("CBOT"), a designated contract market. Authority for extending this relief is found in Section 4(c) of the Commodity Exchange Act ("CEA").<sup>1</sup>

**DATES:** Comments must be received on or before August 21, 2008.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov/http://frwebgate.access.gpo/cgi-bin/leaving>. Follow the instructions for submitting comments.

- *E-mail:* [secretary@cftc.gov](mailto:secretary@cftc.gov). Include "CME/CBOT Section 4(c) Petition" in the subject line of the message.

- *Fax:* 202-418-5521.

- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

- *Courier:* Same as mail above.

All comments received will be posted without change to <http://www.CFTC.gov/>.

**FOR FURTHER INFORMATION CONTACT:**

Sarah E. Josephson, Special Counsel, 202-418-5684, [sjosephson@cftc.gov](mailto:sjosephson@cftc.gov), or Phyllis P. Dietz, Associate Director, 202-418-5449, [pdietz@cftc.gov](mailto:pdietz@cftc.gov), Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

**I. The CME/CBOT Petition**

CME, the DCO that provides clearing services for the CBOT, and the CBOT jointly submitted a request to the Commission for an exemptive order under Section 4(c) of the CEA.<sup>2</sup> The order would grant CME approval to clear OTC corn basis swaps and corn, wheat, and soybean calendar swaps,<sup>3</sup> and it would permit the CBOT to list those products for "clearing-only." The contract size for the basis and calendar swap products will be the same as that for corn, wheat, and soybean futures—

5,000 bushels. However, each of the proposed cleared-only OTC products will be cash-settled, in contrast to the CBOT's corn, wheat, and soybean futures contracts, which are physically-settled.

Part 35 of the Commission's regulations<sup>4</sup> exempts swap agreements and eligible persons entering into such agreements from most provisions of the CEA.<sup>5</sup> The term "swap agreement" is defined to include, among other types of agreements, a "basis swap" or a "commodity swap."<sup>6</sup> Part 35 was promulgated pursuant to authority conferred upon the Commission in Section 4(c) of the CEA to exempt certain transactions in order to promote innovation and competition.<sup>7</sup> Various exemptions and exclusions were subsequently added to the CEA by the Commodity Futures Modernization Act of 2000 ("CFMA"),<sup>8</sup> but none apply to agricultural contracts.<sup>9</sup>

Part 35 requires, among other things, that a swap agreement not be part of a fungible class of agreements that are standardized as to their material economic terms<sup>10</sup> and that the creditworthiness of any party having an interest under the agreement be a material consideration in entering into or negotiating the terms of the agreement.<sup>11</sup> Under the arrangement proposed by CME and the CBOT, a cleared-only OTC contract could be offset by another cleared-only OTC contract. Thus, clearing of these OTC contracts would result in contracts that are fungible with other cleared-only contracts with equivalent terms. In addition, the creditworthiness of the counterparty would not be a consideration. Accordingly, the OTC contracts CME would clear would not satisfy all of the conditions of Part 35.<sup>12</sup>

However, Part 35 further permits "any person [to] apply to the Commission for exemption from any of the provisions of the Act \* \* \* for other arrangements or

facilities."<sup>13</sup> CME and the CBOT have petitioned the Commission for an order under Section 4(c) of the CEA that would exempt cleared-only OTC swaps involving corn, wheat, or soybeans to the same extent as contracts that are exempt pursuant to Part 35 of the Commission's regulations.

**II. Section 4(c) of the Commodity Exchange Act**

Section 4(c)(1) of the CEA empowers the Commission to "promote responsible economic or financial innovation and fair competition" by exempting any transaction or class of transactions from any of the provisions of the CEA (subject to exceptions not relevant here) where the Commission determines that the exemption would be consistent with the public interest.<sup>14</sup> The Commission may grant such an exemption by rule, regulation, or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative.

In enacting Section 4(c), Congress noted that the goal of the provision "is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner."<sup>15</sup> Permitting the clearing of OTC corn, wheat, and soybean swaps by CME may foster both financial innovation and competition. It may benefit the marketplace by providing market participants the ability to combine flexible negotiation with central counterparty guarantees and capital efficiencies. In addition, the

<sup>13</sup> Reg. 35.2(d).

<sup>14</sup> Section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1), provides in full that:

In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 7 of this title) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) of this section (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a) of this section, or from any other provision of this chapter (except subparagraphs (c)(ii) and (D) of section 2(a)(1) of this title, except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title), if the Commission determines that the exemption would be consistent with the public interest.

<sup>15</sup> House Conf. Report No. 102-978, 1992 U.S.C.A.N. 3179, 3213.

<sup>4</sup> 17 CFR Part 35 (Commission regulations are hereinafter cited as "Reg. \_\_\_\_").

<sup>5</sup> Jurisdiction is retained for, among other things, provisions of the CEA proscribing fraud and manipulation. See Reg. 35.2.

<sup>6</sup> Reg. 35.1(b)(1)(i). "Commodity" is defined in Section 1a(4) of the CEA to include a variety of specified agricultural products, "and all other goods and articles, except onions \* \* \* and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in."

<sup>7</sup> See 58 FR 5587 (Jan. 22, 1993).

<sup>8</sup> Pub. L. 106-554, 114 Stat. 2763 (2000).

<sup>9</sup> See, e.g., CEA 2(d), (g) and (h).

<sup>10</sup> Reg. 35.2(b).

<sup>11</sup> Reg. 35.2(c).

<sup>12</sup> The contracts that the CBOT proposes to list for clearing-only would, however, meet the requirements of Reg. 35.2(a) and (d) in that they would be entered into solely between eligible swap participants and executed OTC.

<sup>1</sup> 7 U.S.C. 6(c).

<sup>2</sup> A copy of the petition is available on the Commission's Web site at <http://www.CFTC.gov/>.

<sup>3</sup> The suite of OTC agricultural swap products that the CBOT proposes to list for clearing-only is comprised of corn basis swap contracts for the following regions: Northeastern Iowa, Northwestern Iowa, Southern Iowa, Eastern Nebraska, Eastern South Dakota, and Southern Minnesota; and corn, wheat, and soybean calendar swaps.

CBOT has represented that it expects that the proposed cleared-only OTC corn basis and calendar swaps will be a complement to the CBOT's corn futures and will enable corn suppliers and users, including participants in the ethanol industry, to manage volatile basis risk while realizing the benefits of centralized clearing. Similarly, the CBOT has stated that it expects that its proposed cleared-only OTC wheat and soybean calendar swaps will complement wheat and soybean futures, respectively, and will result in similar benefits.

The Commission is requesting comment on whether it should exempt the OTC corn basis swaps and corn, wheat, and soybean calendar swaps that are proposed to be cleared by CME and listed by the CBOT, as described above, to the same extent as are other contracts that are exempt pursuant to Part 35 of the Commission's regulations.

Section 4(c)(2) provides that the Commission may grant an exemption only when it determines that the requirements for which the exemption is being provided should not be applied to the agreements, contracts, or transactions at issue, and the exemption is consistent with the public interest and the purposes of the CEA; that the agreements, contracts, or transactions will be entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory responsibilities under the CEA.<sup>16</sup>

The purposes of the CEA include "promot[ing] responsible innovation and fair competition among boards of trade, other markets, and market participants."<sup>17</sup> It may be consistent with these and the other purposes of the

CEA, and with the public interest, for the cleared-only contracts described herein to be exempt as are other contracts under Part 35 of the Commission's regulations. However, the exception of agricultural commodities from the exemptions and exclusions provided under the CFMA for OTC transactions may be relevant to the analysis. Accordingly, the Commission is requesting comment as to whether an exemption from the requirements of the CEA should be granted in the context of these transactions.

In light of the above, the Commission also is requesting comment as to whether these exemptions will affect its ability to discharge its regulatory responsibilities under the CEA, or with the self-regulatory duties of any designated contract market.

### III. Request for Comment

The Commission requests comment on all aspects of the issues presented by this exemption request.

### IV. Related Matters

#### A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")<sup>18</sup> imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The exemption would not, if approved, require a new collection of information from any entities that would be subject to the exemption.

#### B. Cost-Benefit Analysis

Section 15(a) of the CEA,<sup>19</sup> requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) of the CEA further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five

enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The Commission is considering the costs and benefits of an exemptive order in light of the specific provisions of Section 15(a) of the CEA, as follows:

1. *Protection of market participants and the public.* The contracts that are the subject of the exemptive request will only be entered into by persons who are "appropriate persons" as set forth in Section 4(c) of the Act.

2. *Efficiency, competition, and financial integrity.* Extending the exemption granted under Part 35 to these OTC swap agreements to allow them to be cleared may promote liquidity and transparency in the markets for OTC derivatives on corn, wheat, and soybeans, as well as futures on those commodities. Extending the exemption also may promote financial integrity by providing the benefits of clearing to these OTC markets.

3. *Price discovery.* Price discovery may be enhanced through market competition.

4. *Sound risk management practices.* Clearing of OTC transactions may foster risk management by the participant counterparties. CME's risk management practices in clearing these transactions would be subject to the Commission's supervision and oversight.

5. *Other public interest considerations.* The requested exemption may encourage market competition in agricultural derivatives products without unnecessary regulatory burden.

After considering these factors, the Commission has determined to seek comment on the exemption request as discussed above. The Commission also invites public comment on its application of the cost-benefit provision.

Issued in Washington, DC, on June 30, 2008 by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

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<sup>16</sup> Section 4(c)(2) of the CEA, 7 U.S.C. 6(c)(2), provides in full that:

The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) of this section unless the Commission determines that—

(A) the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and

(B) the agreement, contract, or transaction—

(i) will be entered into solely between appropriate persons; and

(ii) will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under this Act.

<sup>17</sup> Section 3(b) of the CEA, 7 U.S.C. 5(b). *See also* Section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1) (purpose of exemptions is "to promote responsible economic or financial innovation and fair competition").

<sup>18</sup> 44 U.S.C. 3507(d).

<sup>19</sup> 7 U.S.C. 19(a).