

The Commodity Futures Modernization Act of 2000

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Introduction

Derivatives regulation in the United States is a jumble of legal fields, including banking, securities, commodities and bankruptcy law. Any time multiple areas of law and regulation come together, complexities and jurisdictional ambiguities arise. The expanded use of derivatives had prompted expression of alarm from legislators and regulators. On December 21, 2000, President Clinton signed into law the Commodity Futures Modernization Act of 2000 (“CFMA, the Act”)¹, which overhauled the Commodity Exchange Act of 1936 (“CEA”) and amended securities, banking and bankruptcy laws to update the regulatory structure and to clarify the legal status of derivatives products. CFMA provides greater legal certainty for over the counter (“OTC”) derivatives and creates a new less onerous regulatory framework for boards of trade that are regulated by the Commodity Futures Trading Commission (“CFTC”). The CFMA also established a new framework for trading security futures products on futures and securities exchanges.

This memorandum briefly discusses some of the more important features of the CFMA. The CFMA is lengthy and there are many important provisions, which are not covered in this paper.

¹ The Commodity Futures Modernization Act of 2000 was adopted as part of the Consolidated Appropriations Act of 2001 (HR 4577).

What are derivatives?

A derivatives transaction is a bilateral contract whose value is based on the value of an underlying asset, reference rate, or index. A financial derivative is a financial instrument based upon another more elementary financial instrument. Derivatives transactions have evolved in the past fifteen years to cover a broad range of underlying products including stocks, currency exchange rates, debt instruments, commodities (such as oil, metal, pork bellies, etc.) and equities. Privately negotiated derivatives transactions often referred to as over the counter derivatives come in many varieties. Derivatives traders can speculate on future trends in financial assets or commodities without actually owning the underlying items. Derivatives may be used to reduce financial risk or to speculate.

Broadly derivatives can be classified into three categories, futures, options, and swaps. A **futures** contract is a type of forward contract. An agreement reached at one point in time calling for the delivery of some commodity at a specified later date at a price established at the time of contracting. As the name implies an **option** is the right to buy or sell for limited time a particular good at a specified price. A **swap** is an agreement between two or more parties to exchange sets of cash flows over a period in the future.

In the US the **regulatory framework** for trading of futures is governed by the CEA. The CEA requires all futures contracts to be traded on an exchange duly designated by the CFTC, unless otherwise exempted from the requirement by CFTC. In the case of options

jurisdiction is divided between the CFTC and Securities Exchange Commission ("SEC"). The CFTC is responsible for regulating all options (generally options on futures) other than in relation to options on individual equities, equity indexes as well as certain other products of a financial nature, which come under the jurisdiction of the SEC. By contrast the swaps market has virtually no government regulation.

Commodity Futures Modernization Act of 2000

For at least five years, House and Senate agriculture committees heard from futures exchanges that they are losing business to overseas exchanges and OTC markets because of the lack of flexibility and excessive requirements of CFTC regulations. In 1998 congressional agricultural committees asked the President's Working Group on Financial Products ("PWG") to find a solution. The recommendations of the PWG formed the core the most sweeping amendments to derivatives law since the creation of the CFTC in 1974.²

Three new markets

Previously all trading of "contracts for future delivery" had to by law be done on designated contract markets, i.e. Futures exchanges. Unless the product at issue fit into a statutory exclusion or CFTC crafted exemption the product had to be traded on a designated exchange. The principle exclusions and exemptions from the exchange-

² Purposes of the CFMA, refer to Appendix 1

trading requirement for futures contracts were the forward contract exclusion, (which was limited to specified financial products) and the swaps exemption.

Thus under the old law, there was essentially only one category of market that was subject to the provisions of the CEA, namely the designated contract market. The new law (CFMA) however recognizes several categories of markets, including the designated contract markets. The Act establishes three new market categories with differing requirements for each one concerning the degree of self-regulatory responsibility as well as limitations on products and participants. CFMA matches the degree and manner of regulation to the varying nature of products traded and the sophistication of their customers. The Act establishes three regulatory tiers for markets:

1. Recognized Futures Exchanges / Designated Contract Markets – Designated contract markets are futures or option exchanges that may list for trading contracts based on all types of products and that may allow access to their facilities by all types of traders, including retail customers. Designated contract markets are most like traditional futures exchanges. Part 38 of the CFTC's rules³ sets forth the procedures and requirements for a board of trade or trading facility to be designated as a contract market.

A board of trade seeking designation as a contract market will have to demonstrate to the CFTC that it has in place certain rules and procedures that provide for prevention of market manipulation, fair and equitable trading, etc. The **criteria for initial designation**

³ Rules referenced herein refer to the CFTC's proposed rules and guidance to implement the Commodity Futures Modernization Act of 2000 (CFMA).

as a contract market are set forth in Section 5(b) of the CEAct and Part 38 of the CFTC's regulations. The criteria relate to the following standards:

- (1) General Demonstration of Adherence to Designation Criteria;
- (2) Prevention of Market Manipulation;
- (3) Fair and Equitable Trading;
- (4) Enforcement of Rules on the Trade Execution Facility;
- (5) Financial Integrity of Transactions;
- (6) Disciplinary Procedures;
- (7) Public Access to Information on the Contract Market; and
- (8) Ability of the Contract Market to Obtain Information.

Existing futures exchanges and any others seeking to be licensed as designated contract markets would have to comply with core principles rather than prescriptive regulations. In addition to the above initial requirements for designation, a designated contract market must comply, on a continuing basis, with the following 18 **core principles**.⁴

Under the old law a board of trade had to be separately designated as a contract market for each commodity on which it proposed to trade futures contracts. Under the CFMA a board of trade need only be designated once and without reference to specific commodities.⁵

⁴ Refer to Appendix 2 for the 18 core principles.

⁵ For a list of designated contract exchanges and applications pending as on April 20, 2001 refer to Appendix 3.

2. Derivatives Transaction Execution Facilities (DTEFs) – A board of trade may register with the CFTC as a DTEF if it meets certain requirements as to the underlying commodities and restricts access to certain eligible traders. The DTEFs are federally regulated but at an intermediate level of regulation with nine less restrictive core principles.

Participants Eligible to Trade on a DTEF

A board of trade electing to operate as a derivatives transaction execution facility generally must limit trading to institutional and non-retail traders. Specifically, to trade on a registered derivatives transaction execution facility, a trader must be either:

- An "eligible contract participant" at the time the entity enters into the trade. The term "eligible contract participant" is defined in Section 1a(12) of the or
- A person trading through a futures commission merchant that is:
 - registered with the Commission;
 - a member of a futures self-regulatory organization or, if the person trades only security futures products on the facility, a national securities association registered under 15A(a) of the Securities Exchange Act of 1934;
 - a clearing member of a derivatives clearing organization; and
 - has net capital of at least \$20,000,000.

Products Eligible for Listing on a DTEF

The commodities eligible to be traded on a DTEF are specified in section 5a of the CEA. In this regard, the CEA provides that DTEFs may list contracts based on underlying products that:

- have a nearly inexhaustible deliverable supply;
- have a deliverable supply that is sufficiently large that the contract is highly unlikely to be susceptible to the threat of manipulation;
- have no cash market; or
- are a security futures product and the registered DTEF is a national securities exchange registered under the Securities Exchange Act of 1934;

Those commodities defined as “excluded commodities” in section 1a(13) of the CEA meet the first three eligibility requirements. Section 1a(13) defines an “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.

Other commodities may be eligible to trade on a DTEF based upon an individualized determination by the CFTC. Such determination would be based upon a finding that the commodity is highly unlikely to be susceptible to the threat of manipulation, considering the market characteristics, surveillance history, self-regulatory record and capacity of the facility on which it trades. The CFTC may make such a determination by rule, regulation or order, after notice and an opportunity for a hearing through submission of written data,

views and arguments. In addition, agricultural commodities enumerated in section 1a(4) of the Act may be traded on a DTEF if they have been approved by the CFTC.⁶

Criteria for Registration as a DTEF

Under Section 5(a), a registered DTEF must meet specified registration requirements and it must adhere to eight core principles on an ongoing basis. Part 37 of the CFTC's rules⁷ sets forth the procedures and requirements for registration of a board of trade or trading facility as a DTEF. In addition, boards of trade may petition the CFTC to determine whether a particular futures or option contract may be traded on a DTEF. The criteria for initial designation as a contract market derivatives transaction execution facility relate to the following standards:

- (1) General Demonstration of Adherence to Registration Criteria;
- (2) Deterrence of Abuses;
- (3) Establishment of Trading Procedures;
- (4) Provision for Financial Integrity of Transactions.

To maintain registration, a registered DTEF⁸ must be in compliance with the core principles of section 5a(d) of the CEA. Accordingly, an applicant for DTEF registration must certify to the Commission that it has the capacity to, and upon commencing operations will, operate in compliance with the core principles.⁹

⁶ For a list of requests for approval of contracts or instruments pending as on April 20, 2001 at CFTC refer to Appendix 4.

⁷ Rules referenced herein refer to the CFTC's proposed rules and guidance to implement the Commodity Futures Modernization Act of 2000 (CFMA)

⁸ As on April 20, 2001 there were no registered DTEFs nor were there any applications pending for DTEFs

⁹ For a list of 8 core principles refer to Appendix 5

3. Exempt Multilateral Transaction Execution Facilities / Exempt Boards of Trade – A board of trade may elect to be exempted from all provisions of the CEA, except antifraud and anti-manipulation provisions, if it meets certain criteria and submits to the CFTC a notice that it so elects. The exemption is generally only available for markets in financial derivatives that are limited to institutional traders. Since these markets are exempt from the CEA and CFTC regulations, they cannot hold themselves out as being federally regulated markets.

Clearing organizations

The Act also creates a new framework for clearing organizations and treats clearing organizations as independent of an exchange. So far clearing organizations had been subject to minimal regulation; the act now imposes a new regime of federal regulation on commodity clearing organizations. The Act defines derivatives clearing organizations (“DCO”) as entities that become the counter party to market participants and requires that transactions executed on a designated contract markets must be cleared only by recognized clearing organizations. Other trading facilities such as DTEF’s, Exempt board of trade may but need not provide for the clearance of transactions through a DCO. To register and maintain registration as a DCO the applicant has to demonstrate compliance with 13 core principles¹⁰ regarding financial, operational and managerial resources.¹¹

Swaps and Off-exchange Derivatives

¹⁰ Refer to Appendix 6

¹¹ For a list of the Derivatives Clearing Organizations Registered with the CFTC refer to Appendix 7.

A long standing question in derivatives regulation was whether the CEA applies to contracts that are not traded on futures exchanges. In the 1980's an off-exchange market in derivatives grew up. The major dealers in this OTC market were banks and securities firms, and the principal instrument was the swap contract. Though swaps were clearly "in the character of" futures contracts CFTC did not assert its jurisdiction, however the provisions remained a source of legal risk to the swaps market.

In 1993, the CFTC addressed the issue of legal uncertainty of swaps by issuing regulations exempting swaps, and other OTC derivatives, from the CEA. Under the exemption swaps were not to be considered futures as long as they met several conditions that distinguished them from exchange traded contracts. Among these conditions was a requirement that swaps must be bilaterally negotiated agreements and not traded on an exchange or exchange like facility open to multiple buyers and sellers. The CFMA has deleted these conditions and increased the range of financial products and transactions exempt from CFTC regulations. Now under the Act any swap transaction (other than a transaction on an agricultural commodity) is excluded from the CEA if 1. the parties to the transaction are eligible contract participants (ECP), 2. the transaction is subject to individual negotiation by the parties and 3. the transactions not executed or traded on a trading facility.

Hybrid instruments

The treatment afforded to certain hybrid instruments under the CFTC Regulations is expanded by the Act. The term “hybrid instrument” is defined to mean a security having one or more payments indexed to a commodity. A Hybrid instrument is exempt from the Act if it is predominately a security or bank product. A hybrid instrument is predominately a security or bank product if:

- 1) the issuer receives payment of the full purchase price when the instrument is delivered;
- 2) the purchaser is not required to pay margin or make any payment other than the purchase price
- 3) the terms of the instrument do not subject the issuer to mark-to market margining requirements; and
- 4) the instrument is not marketed as a futures contract.

Futures Contracts on Single Stocks

The 1982 Shad/Johnson agreement divided regulatory jurisdiction over futures and options based on securities and stock indexes between the CFTC and SEC. One provision of Shad/Johnson was a ban on futures contracts based on single stocks. Under the Act such contracts can be traded with certain restrictions. Brokers would have to determine that single stock futures were suitable investments for particular customers, and would not be allowed to execute customer trades while simultaneously trading for their own accounts. The CFTC must consult the SEC before approving single stock contracts. SEC has enforcement authority regarding insider trading, price manipulation front running and

other violations of the securities laws that might involve single stock futures (as it does for stock index futures and stocks themselves) but could delegate this authority to an inter-market board including the CFTC and the SEC.

Tax Issues

New tax laws were enacted that, with some exceptions, will treat gain or loss on security futures contracts the same as gain or loss on the disposition of property. In general the capital gain or loss from the sale or exchange of a security futures contract will be short term capital gain or loss. More favorable long term capital gain treatment will not be available.

Prohibition of the application of the new law to certain products

The CFMA adds a strongly worded section to the CEA to drive home the point that it shall not be construed that any product not specifically mentioned in the CEA, or any transaction specifically excluded or exempted from the CEA is subject to the CEA. Moreover the CFMA states that none of its provisions apply to defined banking products offered or entered into in the US before December 5, 2000. This section has been introduced to limit the scope and any liberal interpretation of the CEA and CFTC Regulations.

Conclusion

To sum up the CFMA establishes multiple levels of trading facilities and codifies the unregulated status of certain derivatives. The Act also exempts many currently regulated contracts from oversight by the CFTC, and permits the trading of a new kind of contract: a futures contract based on the stock of an individual corporation.

The real challenge from the CFMA will be the joint operations of the CFTC and the SEC. The numerous requirements of cooperation and coordination between the CFTC and SEC, may delay the launch of security futures in the USA.

Bibliography

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- 3) Christopher Culp, *Derivatives Regulation: Problems and Prospects* <http://www.cei.org/UpdateReader.asp?ID=210>
- 4) Commodity Futures Modernization Act of 2000 HR 5660 <http://agriculture.house.gov/txt5660.pdf>
- 5) OTC Derivatives under the Commodity Futures Modernization Act of 2000 Brown & Wood LLP http://www.brownwoodlaw.com/m_013001.htm
- 6) Kolb, Robert W. *Financial Derivatives*. Blackwell Publishers, Oxford, UK (1996)
- 7) Scott E. Early and Kathryn M. Trkla, *TU.S. Derivatives Markets Enter the Brave New World of Regulatory Reform* Journal of Global Financial Markets, Vol1, No.1 Spring 2001.
- 8) www.cftc.gov
- 9) <http://law.utoledo.edu/cybersecurities/HR4577.htm>

Appendix 1

SEC. 2. PURPOSES

The purposes of this Act are--

- (1) to reauthorize the appropriation for the Commodity Futures Trading Commission;
- (2) to streamline and eliminate unnecessary regulation for the commodity futures exchanges and other entities regulated under the Commodity Exchange Act;
- (3) to transform the role of the Commodity Futures Trading Commission to oversight of the futures markets;
- (4) to provide a statutory and regulatory framework for allowing the trading of futures on securities;
- (5) to clarify the jurisdiction of the Commodity Futures Trading Commission over certain retail foreign exchange transactions and bucket shops that may not be otherwise regulated;
- (6) to promote innovation for futures and derivatives and to reduce systemic risk by enhancing legal certainty in the markets for certain futures and derivatives transactions;
- (7) to reduce systemic risk and provide greater stability to markets during times of market disorder by allowing the clearing of transactions in over-the-counter derivatives through appropriately regulated clearing organizations; and
- (8) to enhance the competitive position of United States financial institutions and financial markets.

Appendix 2

SEC. 5. DESIGNATION OF BOARDS OF TRADE AS CONTRACT MARKETS.

(d) CORE PRINCIPLES FOR CONTRACT MARKETS-

(1) IN GENERAL- To maintain the designation of a board of trade as a contract market, the board of trade shall comply with the core principles specified in this subsection. The board of trade shall have reasonable discretion in establishing the manner in which it complies with the core principles.

(2) COMPLIANCE WITH RULES- The board of trade shall monitor and enforce compliance with the rules of the contract market, including the terms and conditions of any contracts to be traded and any limitations on access to the contract market.

(3) CONTRACTS NOT READILY SUBJECT TO MANIPULATION- The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

(4) MONITORING OF TRADING- The board of trade shall monitor trading to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process.

(5) POSITION LIMITATIONS OR ACCOUNTABILITY- To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate.

`(6) EMERGENCY AUTHORITY- The board of trade shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to--

`(A) liquidate or transfer open positions in any contract;

`(B) suspend or curtail trading in any contract; and

`(C) require market participants in any contract to meet special margin requirements.

`(7) AVAILABILITY OF GENERAL INFORMATION- The board of trade shall make available to market authorities, market participants, and the public information concerning--

`(A) the terms and conditions of the contracts of the contract market; and

`(B) the mechanisms for executing transactions on or through the facilities of the contract market.

`(8) DAILY PUBLICATION OF TRADING INFORMATION- The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

`(9) EXECUTION OF TRANSACTIONS- The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions.

`(10) TRADE INFORMATION- The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information for purposes of assisting in the prevention of customer and market abuses and providing evidence of any violations of the rules of the contract market.

`(11) FINANCIAL INTEGRITY OF CONTRACTS- The board of trade shall establish and enforce rules providing for the financial integrity of any contracts traded on the contract market (including the clearance and settlement of the transactions with a derivatives clearing organization), and rules to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.

`(12) PROTECTION OF MARKET PARTICIPANTS- The board of trade shall establish and enforce rules to protect market participants from abusive practices committed by any party acting as an agent for the participants.

`(13) DISPUTE RESOLUTION- The board of trade shall establish and enforce rules regarding and provide facilities for alternative dispute resolution as appropriate for market participants and any market intermediaries.

`(14) GOVERNANCE FITNESS STANDARDS- The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any

other persons with direct access to the facility (including any parties affiliated with any of the persons described in this paragraph).

`(15) CONFLICTS OF INTEREST- The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market and establish a process for resolving such conflicts of interest.

`(16) COMPOSITION OF BOARDS OF MUTUALLY OWNED CONTRACT MARKETS- In the case of a mutually owned contract market, the board of trade shall ensure that the composition of the governing board reflects market participants.

`(17) RECORDKEEPING- The board of trade shall maintain records of all activities related to the business of the contract market in a form and manner acceptable to the Commission for a period of 5 years.

`(18) ANTITRUST CONSIDERATIONS- Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall endeavor to avoid--

 `(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

 `(B) imposing any material anticompetitive burden on trading on the contract market.

Appendix 3

Boards of Trade Designated as Contract Markets				
The following exchanges are designated contract markets under the Commodity Exchange Act.				
Exchange	Date Designated	Year Established	Major Commodities Traded	Remarks
Cantor Financial Futures Exchange (CX)	12/21/2000*	1998	US Treasury and Agency Notes.	The CX is a joint venture of the Board of Trade of the City of New York, Inc. and Cantor Fitzgerald company. CX provides a proprietary electronic trading platform.
Chicago Board of Trade (CBOT)	12/21/2000*	1848	Grains, US Treasury notes and bonds and other interest rates, stock Indexes.	The CBOT is the first organized commodity exchange. Futures trading started in 1865 in agricultural commodities including wheat, corn, and oats.
Chicago Mercantile Exchange (CME)	12/21/2000*	1919	Livestock, dairy, stock index, Eurodollar and other interest rates, currencies.	The CME was originally known as the Chicago Butter and Egg Board, which was formed in 1898. It became the CME in 1919, trading futures on a variety of agricultural products.
FutureCom (FCOM)	12/21/2000*	2000		The FCOM is an internet based, electronic exchange that has not yet commenced trading futures or options.
Kansas City Board of Trade (KCBT)	12/21/2000*	1856	Wheat, Natural Gas, and stock indexes .	The KCBT was established by local Kansas City merchants in 1856 as a means of trading grain. Futures trading in grains began in 1876.
Merchant's Exchange of St. Louis (MESL)	12/21/2000*	2000	Barge Freight futures.	The MESL was originally established in 1836 as a cash commodity market. In 2000, the MESL was approved as a contract market. It operates as an electronic exchange offering contracts in barge freight service futures.
Minneapolis Grain Exchange (MGE)	12/21/2000*	1947	Spring Wheat futures.	The MGE was established by the Minneapolis Chamber of Commerce in 1881 as an organization designed to promote trade in grains and to prevent abuses. In 1947, it became the MGE.

New York Board of Trade (NYBOT)	12/21/2000*	1998	Sugar, Coffee, Cocoa, Cotton, and Currency Cross-Rate futures.	The New York Board of Trade is the parent company of the Coffee, Sugar & Cocoa Exchange (CSCE) founded in 1882; the New York Cotton Exchange (NYCE) founded in 1870 (FINEX and Citrus Associates are divisions of NYCE); and the New York Futures Exchange (NYFE) founded in 1979. NYBOT was formed in 1998 when the CSCE and the NYCE merged.
New York Mercantile Exchange (NYMEX)	12/21/2000*	1956	Metals and energy products.	The NYMEX consists of two divisions -- the NYMEX Division and the COMEX Division (COMEX). The exchange was formed via a merger between these exchanges in 1994. The NYMEX was founded in 1872 as the Butter and Cheese Exchange of New York. The Commodity Exchange (COMEX) was founded in 1933 from the merger of the New York Metal Exchange, the Rubber Exchange, the National Raw Silk Exchange, and the New York Hide Exchange.
OnExchange Board of Trade (ONXBOT)	12/22/2000	2000		The ONXBOT is an internet based electronic exchange that has not yet commenced trading futures or options.
Philadelphia Board of Trade (PBOT)	12/21/2000*	1986	Currencies.	The PBOT is a subsidiary of the Philadelphia Stock Exchange. There has been no trading since the end of 1999.

* Section 5(c) of the Commodity Futures Modernization Act of 2000 (CFMA) provides that boards of trade that were designated as a contract market on the date of the enactment of the CFMA (December 21, 2000) are to be considered as a designated contract market under the Commodity Exchange Act as amended. The contract markets' having a designation date followed by an asterisk are those deemed to be contract markets under the CFMA.

Contract Market Designation Applications Pending at the CFTC

Date Application Received	Exchange	Location	Types of Commodities to be Traded	Staff Remarks
05/08/00	BrokerTec Futures Exchange (BTEX)	Jersey City, NJ	Government securities	
03/13/01	Hedge Street, Inc.	Portola Valley, CA	Economic Indexes	

Appendix 4

Requests for Approval of Contracts or Instruments Pending at CFTC

[last updated at 04/20/01]

Requests from Designated Contract Markets						
Designated Contract Market	Contract/Instrument	Type of Product	Date Received	Federal Register Comment Due Date	Status/Staff Remarks	90-Day Statutory Due Date
CFFE	When Issued U. S. Treasury Ten Year Notes	future	01/25/01	03/16/01	Under Review.	05/25/01
NYNEX	Light Louisiana Sweet Crude Oil	future	04/11/01		Under Review	07/10/01
NYNEX	West Texas Sour Crude Oil	future	04/11/01		Under Review	07/10/01
NYNEX	West Texas Intermediate at Midland, TX Crude Oil	future	04/11/01		Under Review	07/10/01
NYNEX	Mars Crude Oil	future	04/11/01		Under Review	07/10/01
BTEX	U. S. Treasury Notes (6.5 - 10 year)	future	05/08/00	07/10/00	The review has been temporarily suspended pending confirmation from BTEX how the submission shall be treated under the new provisions of the Commodity Futures Modernization Act of 2000.	N/A
BTEX	U. S. Treasury Notes (5 year)	future	05/08/00	07/10/00	The review has been temporarily suspended pending confirmation from BTEX how the submission shall be treated under the new	N/A

					provisions of the Commodity Futures Modernization Act of 2000.	
BTEX	U. S. Treasury Notes (2 year)	future	05/08/00	07/10/00	The review has been temporarily suspended pending confirmation from BTEX how the submission shall be treated under the new provisions of the Commodity Futures Modernization Act of 2000.	N/A
BTEX	U. S. Treasury Bonds	future	05/08/00	07/10/00	The review has been temporarily suspended pending confirmation from BTEX how the submission shall be treated under the new provisions of the Commodity Futures Modernization Act of 2000.	N/A
CBT	Dow Jones Composite Index	future	07/31/00	09/14/00	Review suspended at the request of the CBT.	N/A
CBT	Dow Jones Internet Composite Index	option	07/31/00	09/14/00	Review suspended at the request of the CBT.	N/A

Appendix 5

SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILITIES

`(d) CORE PRINCIPLES FOR REGISTERED DERIVATIVES TRANSACTION EXECUTION FACILITIES-

`(1) IN GENERAL- To maintain the registration of a board of trade as a derivatives transaction execution facility, a board of trade shall comply with the core principles specified in this subsection. The board of trade shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles.

`(2) COMPLIANCE WITH RULES- The board of trade shall monitor and enforce the rules of the facility, including any terms and conditions of any contracts traded on or through the facility and any limitations on access to the facility.

`(3) MONITORING OF TRADING- The board of trade shall monitor trading in the contracts of the facility to ensure orderly trading in the contract and to maintain an orderly market while providing any necessary trading information to the Commission to allow the Commission to discharge the responsibilities of the Commission under the Act.

`(4) DISCLOSURE OF GENERAL INFORMATION- The board of trade shall disclose publicly and to the Commission information concerning--

`(A) contract terms and conditions;

`(B) trading conventions, mechanisms, and practices;

`(C) financial integrity protections; and

`(D) other information relevant to participation in trading on the facility.

`(5) DAILY PUBLICATION OF TRADING INFORMATION- The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for contracts traded on the facility if the Commission determines that the contracts perform a significant price discovery function for transactions in the cash market for the commodity underlying the contracts.

`(6) FITNESS STANDARDS- The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members, and any other persons with direct access to the facility, including any parties affiliated with any of the persons described in this paragraph.

`(7) CONFLICTS OF INTEREST- The board of trade shall establish and enforce rules to minimize conflicts of interest in the decision making process of the derivatives transaction execution facility and establish a process for resolving such conflicts of interest.

`(8) RECORDKEEPING- The board of trade shall maintain records of all activities related to the business of the derivatives transaction execution facility in a form and manner acceptable to the Commission for a period of 5 years.

`(9) ANTITRUST CONSIDERATIONS- Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall endeavor to avoid--

`(A) adopting any rules or taking any actions that result in any unreasonable restraint of trade; or

`(B) imposing any material anticompetitive burden on trading on the derivatives transaction execution facility.

Appendix 6

SEC. 5b. DERIVATIVES CLEARING ORGANIZATIONS.

`(c) REGISTRATION OF DERIVATIVES CLEARING ORGANIZATIONS-

`(2) CORE PRINCIPLES-

`(A) IN GENERAL- To be registered and to maintain registration as a derivatives clearing organization, an applicant shall demonstrate to the Commission that the applicant complies with the core principles specified in this paragraph. The applicant shall have reasonable discretion in establishing the manner in which it complies with the core principles.

`(B) FINANCIAL RESOURCES- The applicant shall demonstrate that the applicant has adequate financial, operational, and managerial resources to discharge the responsibilities of a derivatives clearing organization.

`(C) PARTICIPANT AND PRODUCT ELIGIBILITY- The applicant shall establish--

`(i) appropriate admission and continuing eligibility standards (including appropriate minimum financial requirements) for members of and participants in the organization; and

`(ii) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the applicant.

`(D) RISK MANAGEMENT- The applicant shall have the ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.

`(E) SETTLEMENT PROCEDURES- The applicant shall have the ability to--

 `(i) complete settlements on a timely basis under varying circumstances;

 `(ii) maintain an adequate record of the flow of funds associated with each transaction that the applicant clears;
and

 `(iii) comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations.

`(F) TREATMENT OF FUNDS- The applicant shall have standards and procedures designed to protect and ensure the safety of member and participant funds.

`(G) DEFAULT RULES AND PROCEDURES- The applicant shall have rules and procedures designed to allow for efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the derivatives clearing organization.

`(H) RULE ENFORCEMENT- The applicant shall--

`(i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with rules of the applicant and for resolution of disputes; and

`(ii) have the authority and ability to discipline, limit, suspend, or terminate a member's or participant's activities for violations of rules of the applicant.

`(I) SYSTEM SAFEGUARDS- The applicant shall demonstrate that the applicant--

`(i) has established and will maintain a program of oversight and risk analysis to ensure that the automated systems of the applicant function properly and have adequate capacity and security; and

`(ii) has established and will maintain emergency procedures and a plan for disaster recovery, and will periodically test backup facilities sufficient to ensure daily processing, clearing, and settlement of transactions.

`(J) REPORTING- The applicant shall provide to the Commission all information necessary for the Commission to conduct the oversight function of the applicant with respect to the activities of the derivatives clearing organization.

`(K) RECORDKEEPING- The applicant shall maintain records of all activities related to the business of the applicant as a derivatives

clearing organization in a form and manner acceptable to the Commission for a period of 5 years.

`(L) PUBLIC INFORMATION- The applicant shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) available to market participants.

`(M) INFORMATION SHARING- The applicant shall--

 `(i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and

 `(ii) use relevant information obtained from the agreements in carrying out the clearing organization's risk management program.

`(N) ANTITRUST CONSIDERATIONS- Unless appropriate to achieve the purposes of this Act, the derivatives clearing organization shall avoid--

 `(i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or

 `(ii) imposing any material anticompetitive burden on trading on the contract market.

Appendix 7

Derivatives Clearing Organizations Registered with the Commission Pursuant to the Commodity Exchange Act*			
Clearing Organization	Exchange(s)	Date Designated	Remarks
Board of Trade Clearing Corporation (BOTCC)	Chicago Board of Trade (CBOT) Merchant's Exchange of St. Louis (MESL)	12/21/2000	BOTCC is an independent clearing organization owned by its clearing members that was formed in 1925.
CME Clearing House	Chicago Mercantile Exchange (CME)	12/21/2000	The Clearing House exists within the Clearing Division of the CME.
Kansas City Board of Trade Clearing Corporation	Kansas City Board of Trade (KCBT)	12/21/2000	The Kansas City Board of Trade Clearing Corporation is a wholly owned subsidiary of the KCBT.
MGE Clearing House	Minneapolis Grain Exchange (MGE)	12/21/2000	The Clearing House became a department of the MGE in 1977. It was formally a separate entity known as the Minneapolis Clearing Corporation.
New York Clearing Corporation (NYCC)	New York Board of Trade (NYBOT) Cantor Financial Futures Exchange (CX)	12/21/2000	NYCC is a separate corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York. NYCC took over clearing functions of the Commodity Clearing Corporation and the Commodity Futures Clearing Corporation of New York in 1999 that formerly cleared for the New York Cotton Exchange and Coffee, Sugar & Cocoa Exchange, Inc. respectively.
NYMEX Clearing House	New York Mercantile Exchange (NYMEX)	12/21/2000	The Clearing House is a division of NYMEX. The NYMEX Clearing House is expected to absorb COMEX clearing functions by the end of 2001.
OnExchange Clearing Corporation	OnExchange Board of Trade (ONXBOT)	12/22/2000	OnExchange Clearing Corporation and ONXBOT are subsidiaries of OnExchange Inc.
Intermarket Clearing Corporation (ICC)	Philadelphia Board of Trade (PBOT)	12/21/2000	

* Section 5b(d) of the Act as added by the Commodity Futures Modernization Act of 2000 (CFMA) provides that derivatives clearing organizations (DCOs) shall be deemed to be registered under this section to the extent that the DCO clears agreements, contracts, or transactions for a board of trade that has been designated by the Commission as a contract market for such agreements, contracts, or transactions before the date of enactment of this section. This provision captures all futures clearing organizations that have ever cleared any futures contracts for designated contract markets before the CFMA became effective.