

the commercial fishery could include deducting all or some of the prior year commercial overage (in weight) from the subsequent year's commercial catch limit.

Proactive AMs for the commercial fishery could include adjustable trip limits, as a method to prevent ACLs from being exceeded. When a given percent of the commercial catch limit (in weight) is reached, trips limits in the fishery for that species could be decreased until the total commercial catch limit is reached. The fixed percentage at which trip limits would drop would vary depending on which species the limit applies to, and the trip limits themselves would be species-specific. Other proactive AMs could include inseason closures when quotas are projected to be attained. Many Council-managed species already have in place such measures; however, the Council may consider additional approaches or modification of existing reporting requirements in support of improving inseason fishery management.

Other Considerations

The Council could consider establishing a periodic formal review by the SSC, which would provide the opportunity to revise ABC control rules every few years after a control rule has been implemented. For example, a 5-year time period could be used. The Council may also identify a broader approach to inclusion of species in its FMPs that may or may not require conservation or management, but that may be relevant in trying to further ecosystem management in the fishery. While not required, the Council could identify and include non-target stocks and/or ecosystem components in its FMPs. The Council may also consider ecosystem issues in the development of the catch limit framework for any of the stocks in the fisheries. Any allocation issues relating to the development of ABC, ACL, or AMs could also be considered by the Council.

The Council may deviate from these examples and develop additional approaches, consistent with their description in the Magnuson-Stevens Act, NS1, and the NS 1 Guidelines. The above issues under consideration are described in greater detail in the scoping document itself; copies may be obtained from the Council (see **ADDRESSES**) or via the Internet at <http://www.mafmc.org.mid-atlantic/comments/comments.htm>.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 19, 2009

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9-6468 Filed 3-23-09; 8:45 am]

BILLING CODE 3510-22-S

COMMODITY FUTURES TRADING COMMISSION

Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act, Permitting the Chicago Mercantile Exchange to Clear Certain Over-the-Counter Agricultural Swaps and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Customer Positions in Such Cleared-Only Contracts and Associated Funds To Be Commingled With Other Positions and Funds Held in Customer Segregated Accounts

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: By petition dated April 21, 2008 (Petition), 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, requested permission to clear certain over-the counter (OTC) swap agreements (swaps) in corn, wheat, and soybeans. Authority for granting this request is found in Section 4(c) of the Commodity Exchange Act (Act).¹ The Petition also requested permission pursuant to Section 4d of the Act² to allow CME and futures commission merchants (FCMs) clearing through CME to commingle positions in those cleared-only OTC swaps (cleared-only contracts) and funds associated with those positions with positions and funds otherwise required to be held in a customer segregated account. The Commodity Futures Trading Commission (Commission) has reviewed public comments and the entire record in this matter and it has determined to issue an order granting the requested permission, subject to certain terms and conditions.

DATES: *Effective Date:* March 18, 2009.

FOR FURTHER INFORMATION CONTACT:

Phyllis P. Dietz, Associate Director, 202-418-5449, pdietz@cftc.gov, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

¹ 7 U.S.C. 6(c).

² 7 U.S.C. 6d.

SUPPLEMENTARY INFORMATION:

I. The CME/CBOT Petition

CME, the DCO that provides clearing services for CBOT, and CBOT jointly submitted a Petition requesting that the Commission issue an exemptive order under Section 4(c) of the Act.³ The order would grant CME approval to clear OTC corn basis swaps and corn, wheat, and soybean calendar swaps, and it would permit CBOT to list those products for "clearing-only."⁴ The contract size for the basis and calendar swaps would be the same as that for corn, wheat, and soybean futures—5,000 bushels. Each of the proposed cleared-only contracts would be cash settled, in contrast to the corresponding futures contracts which are physically settled.

Part 35 of the Commission's regulations⁵ exempts, subject to conditions, swap agreements and eligible persons entering into such agreements from most provisions of the Act.⁶ The term "swap agreement" is defined to include, among other types of agreements, a "basis swap" and a "commodity swap."⁷ Part 35 was promulgated pursuant to authority conferred upon the Commission in Section 4(c) of the Act to exempt certain transactions in order to explicitly permit certain off-exchange derivatives transactions and thus promote innovation and competition.⁸ A number of exemptions and exclusions for off-exchange derivatives transactions were subsequently added to the Act by the Commodity Futures Modernization Act of 2000,⁹ but none apply to agricultural contracts.¹⁰

Part 35 requires, among other things, that a swap agreement not be part of a fungible class of agreements that are

³ A copy of the petition is available on the Commission's Web site at <http://www.cftc.gov/>.

⁴ The suite of OTC agricultural swap products that 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.

⁵ 17 CFR Part 35 (Commission regulations are hereinafter cited as "Reg. ____").

⁶ Jurisdiction is retained for, among other things, provisions of the Act proscribing fraud and manipulation. See Reg. 35.2.

⁷ Reg. 35.1(b)(1)(i). "Commodity" is defined in Section 1a(4) of the Act 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."

⁸ See 58 FR 5587 (Jan. 22, 1993). Section 4(c) of the Act was added by Section 502(a) of the Futures Trading Practices Act of 1992, Public Law 102-546, 106 Stat. 3590 (1992).

⁹ Public Law 106-554, 114 Stat. 2763 (2000).

¹⁰ See, e.g., Sections 2(d), (g) and (h) of the Act, 7 U.S.C. 2(d), (g), and (h).

standardized as to their material economic terms,¹¹ 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.¹² Under the arrangement proposed by CME and CBOT, a cleared-only contract could be offset by another cleared-only contract with equivalent terms. In addition, due to the introduction of a clearing guarantee, the creditworthiness of the counterparty would no longer be a consideration. Accordingly, the OTC swaps CME would clear would not satisfy all of the conditions of Part 35.¹³

Part 35 permits “any person [to] apply to the Commission for exemption from any of the provisions of the Act * * * for other arrangements or facilities.”¹⁴ CME and CBOT have petitioned the Commission for an order under Section 4(c) of the Act that would exempt certain cleared-only contracts involving corn, wheat, or soybeans to the same extent as contracts that are exempt pursuant to Part 35 of the Commission’s regulations.

In addition, CME and CBOT also requested an order under Section 4d of the Act so that CME and clearing members of CBOT could hold positions in the cleared-only contracts and associated funds in the customer segregated account along with positions in exchange-traded futures and customer funds, resulting in improved collateral management and other benefits.

II. Sections 4(c) and 4d of the Act

A. Permitting the OTC Swaps To Be Cleared

In enacting Section 4(c) of the Act, 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.”¹⁵ Section 4(c)(1) of the Act 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 Act (subject to exceptions not relevant here) where

the Commission determines that the exemption would be consistent with the public interest.¹⁶ 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.

Section 4(c)(2) of the Act provides that the Commission may grant exemptions from Section 4(a) of the Act only when the Commission determines that the requirements for which an 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 Act; 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 Act.¹⁷

¹⁶ Section 4(c)(1) of the Act, 7 U.S.C. 6(c)(1), provides in full as follows:

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.

¹⁷ Section 4(c)(2) of the Act, 7 U.S.C. 6(c)(2), provides in full as follows:

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.

The Commission requested comment on whether it should grant an exemption from the requirements of the Act, thereby permitting corn basis swaps and corn, wheat, and soybean calendar swaps to be cleared through CME. It also requested comment on whether such an exemption would affect its ability to discharge its regulatory responsibilities under the Act or with the self-regulatory duties of any contract market.

B. Permitting Funds To Be Commingled

Section 4d(a)(2) of the Act prohibits commingling positions executed on a contract market and customer funds associated with such positions together with any funds not required to be so segregated.¹⁸ Section 4d(a)(2) provides that the Commission may grant exceptions to this prohibition by order.

In this case, the corn basis swaps and corn, wheat, and soybean calendar swaps are not executed on a contract market and, thus, holding positions in those contracts and associated funds in an account together with positions and customer funds required to be segregated would, absent a Commission order, violate Section 4d. Having analyzed the risks and benefits associated with commingling such positions and funds in a customer segregated account, the Commission has determined that the benefits of the proposal outweigh the risks and that the proposal, along with conditions set forth by the Commission, will provide for a sufficient level of safeguards to address the risks adequately.

III. Comment Letters

The Commission published a request for comments regarding the 4(c) exemption in the **Federal Register** on July 7, 2008.¹⁹ At the same time, it posted the Petition on the Commission’s Web site, providing the opportunity for the public to comment on any aspect of the Petition, including the request for an order under Section 4d of the Act. As a result of the non-transmission of a comment letter submitted through the Federal eRulemaking Portal, the Commission reopened the comment period on December 31, 2008,

¹⁸ Under Reg. 1.3(gg), the term “customer funds” is defined to include all money, securities, and property received by an FCM or by a DCO from, for, or on behalf of, customers or option customers to margin, guarantee or secure exchange-traded futures contracts or options on futures, and all money accruing to such customers as the result of such contracts. The term “funds” is similarly used herein to refer to cash as well as securities and other property associated with futures contracts or cleared-only contracts.

¹⁹ See 73 FR 38403 (July 7, 2008) (45-day comment period closing August 21, 2008).

¹¹ Reg. 35.2(b).

¹² Reg. 35.2(c).

¹³ The contracts that 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, respectively.

¹⁴ Reg. 35.2(d).

¹⁵ House Conf. Report No. 102–978, 1992 U.S.C.A.N. 3179, 3213.

specifically to afford the commenter whose submission was not received, the opportunity to resubmit the comment.²⁰ In addition, any other member of the public was permitted to comment during the reopened comment period.

The Commission received seven comment letters, one of which was submitted during the reopened comment period. Five letters expressly supported the issuance of an exemptive order to permit clearing of the OTC swaps, citing such benefits as increased transparency and liquidity in the OTC markets, enhanced risk management for market participants, and greater regulatory surveillance including large trader reporting. Of those letters, two specifically commented on the 4d order request. Both of those letters supported the issuance of an order to permit the commingling of positions in cleared-only contracts and associated funds with positions and customer funds otherwise required to be held in a customer segregated account. One letter focused on the bankruptcy treatment of cleared-only contract positions and associated funds when they are held in a customer segregated account.²¹ One commenter opposed the issuance of an exemption permitting clearing of OTC swaps based on concerns about the impact of OTC clearing on the use of exchange-traded futures contracts for hedging purposes.

IV. Findings and Conclusions

After considering the complete record in this matter, including the comments received, the Commission finds that the requirements of Section 4(c) of the Act have been met with respect to the request for an order permitting the clearing of certain corn basis swaps and corn, wheat, and soybean calendar swaps.

First, permitting the clearing of these transactions is consistent with the public interest and with the purposes of the Act. The purposes of the Act include "promot[ing] responsible innovation and fair competition among boards of trade, other markets, and market participants."²² The purpose of an exemption is "to promote economic or financial innovation and fair competition."²³ Permitting the clearing of corn basis swaps and corn, wheat, and soybean calendar swaps by CME would appear to foster both financial

innovation and competition. It could benefit the marketplace by providing eligible swap participants the ability to bring together flexible negotiation with central counterparty guarantees and capital efficiencies. Clearing also may increase the liquidity of the OTC markets and thereby foster competition in those markets.

Second, the OTC swaps would be entered into solely between appropriate persons. Those would be limited to persons qualifying as eligible swap participants under Part 35.²⁴

Third, the exemption would not have a material adverse effect on the ability of the Commission or any designated contract market to carry out its regulatory or self-regulatory responsibilities under the Act. Clearing of OTC swaps will actually enhance the Commission's ability to carry out its regulatory responsibilities by, for example, facilitating the collection of large trader reports for cleared-only contracts. CME will use the same systems, procedures, personnel, and processes to clear the OTC swaps as it currently employs with respect to all of the other transactions it clears on behalf of CBOT.

The commenter who opposed granting the exemption raised a question as to how clearing OTC swaps would impact trading in the corresponding futures contracts, expressing the view that the ability to clear OTC contracts would serve as a disincentive to enter into exchange-traded futures contracts, thereby drawing business away from those markets to OTC markets. Given the lack of empirical data relating to the trading behavior of futures market participants when clearing becomes available for OTC products, the basis for the commenter's concerns cannot be readily substantiated or refuted. As a result, the Commission is unable to conclude that providing eligible swap participants with the opportunity to clear OTC swaps would undermine the purpose or usefulness of trading in the futures markets. Moreover, because eligible swap participants already engage in OTC transactions, permitting clearing would provide a means for achieving benefits that serve the public interest.

The Commission has concluded that permitting the clearing of OTC corn basis swaps and corn, wheat, and soybean calendar swaps, subject to the terms and conditions of the order, furthers the goals of market transparency and liquidity, and financial risk management. It also

enhances the Commission's ability to obtain market information and conduct oversight once OTC transactions are cleared by a registered DCO.

With respect to the petitioners' request for an order pursuant to Section 4d permitting CME and FCMs clearing through CME to commingle cleared-only contract positions and associated funds with positions and customer funds required to be held in a customer segregated account, the Commission has considered whether the additional risk to customers presented by such commingling can be adequately addressed and mitigated. Additional risk is presented to customers as a result of the risk of default involving the commingled cleared-only contracts.

The carrying FCM should have adequate means to address a default by a customer holding cleared-only contracts. In the event of a customer default on a position in a cleared-only corn basis swap, the clearing firm could offset its risk by entering into an opposite position in the OTC corn basis swap market through a broker or dealer. Alternatively, the clearing firm could offset its risk by entering into an opposite transaction in the cash corn basis market, which is very liquid due to participation by country elevators, terminal elevators, ethanol processors, and livestock feeders. In the event of a customer default on a position in the corn, wheat, or soybean cleared-only calendar swaps contracts, the clearing firm could offset its risk by liquidating the customer position through a broker or dealer in the calendar swap market or by taking an economically equivalent position in the corresponding futures contract.

The order requires that CME review the clearing members' risk management capabilities to verify that all members clearing OTC swaps maintain sufficient operational capability to manage a default in a cleared-only contract. In the event of a clearing firm default, CME would have available the same means for managing the default as the clearing firm would have in the first instance.

The order also requires that CBOT (1) maintain a coordinated market surveillance program that encompasses the cleared-only contracts and the corresponding futures contracts, and (2) adopt speculative position limits for each of the cleared-only contracts, that are the same as the limits applicable to the corresponding futures contracts. These measures should mitigate market risk.

Accordingly, the Commission has determined that CME will be able to employ reasonable safeguards to protect customer funds, and that it will be able

²⁰ See 73 FR 80367 (Dec. 31, 2008) (reopening the comment period for 21 days).

²¹ This bankruptcy matter was subsequently addressed in an Interpretative Statement issued by the Commission on September 26, 2008. See 73 FR 65514 (Nov. 4, 2008).

²² Section 3(b) of the Act, 7 U.S.C. 5(b).

²³ Section 4(c)(1) of the Act, 7 U.S.C. 6(c)(1).

²⁴ See Reg. 35.1(b)(2) (defining the term "eligible swap participant").

to measure, monitor, manage, and account for risks associated with transactions and open interest in the cleared-only contracts as it does for other contracts it clears. The Commission believes that CME has sufficiently demonstrated that it will continue to comply with the DCO core principles set forth in Section 5b of the Act in connection with holding customer positions in cleared-only corn basis swaps and corn, wheat, and soybean calendar swaps and associated funds with positions and customer funds required to be held in a customer segregated account pursuant to Section 4d of the Act.

V. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)²⁵ 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 Commission's order will not require a new collection of information from any entities that would be subject to the order.

B. Cost-Benefit Analysis

Section 15(a) of the Act,²⁶ requires the Commission to consider the costs and benefits of its action before issuing an order under the Act. 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 Act 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 Act.

The Commission has considered the costs and benefits of this order in light

of the specific provisions of Section 15(a) of the Act, as follows:

1. *Protection of Market Participants and the Public.* The cleared-only contracts will be entered into only by persons who are "appropriate persons" as set forth in Section 4(c) of the Act. Only eligible swap participants will enter into the corn basis swaps and corn, wheat, and soybean calendar swaps that will be cleared pursuant to the Commission's order. Allowing the commingling of positions in cleared-only contracts and associated funds with positions and customer funds required to be segregated under Section 4d of the Act will benefit market participants by facilitating clearing and the reduction of credit risk for contracts that meet market participants' specific risk management requirements. Customers holding positions in cleared-only contracts also would benefit from having those positions and associated funds held in a customer segregated account in the event of the insolvency of an FCM. Futures customers will be protected from risks associated with the commingling of funds by a number of existing risk management and other safeguards, including CME's financial surveillance of clearing members and its financial resources package, as supplemented by conditions imposed by the order.

2. *Efficiency and Competition.* Allowing the OTC swaps to be cleared appears likely to promote liquidity and transparency in the markets for OTC derivatives as well as futures on those commodities. The commingling of positions in the cleared-only contracts and associated funds with positions and customer funds required to be held in a customer segregated account should result in improved, more efficient, collateral management and lower administrative costs given that risk-reducing positions will be held together in the same account rendering a more precise estimation of the risk posed by the account. The availability of cleared-only contracts also provides another risk management tool that could compete with other OTC products.

3. *Financial Integrity of Futures Markets and Price Discovery.* Price discovery is likely to be enhanced by bringing greater transparency to the OTC market for the subject commodities. The Section 4(c) exemption also may promote financial integrity by providing the benefits of clearing to the OTC markets. As discussed above, the Commission believes that the risks associated with the commingling of funds in the customer segregated account can be appropriately mitigated.

4. *Sound Risk Management Practices.* Clearing of the OTC swaps is likely to improve risk management by the participant counterparties. CME's risk management practices in clearing these transactions are subject to the Commission's supervision and oversight.

5. *Other Public Interest Considerations.* The action taken by the Commission under Sections 4(c) and 4d of the Act is likely to encourage market competition in agricultural derivatives products. It will also further the Commission's overall goals in supporting greater market transparency, credit risk management, and regulatory oversight by encouraging the clearing of OTC products.

The Commission requested comment on its application of these factors in the proposing release. No comments were received.

VI. Order

After considering the above factors and the comment letters received in response to its request for comments, the Commission has determined to issue the following:

Order

(1) The Commission, pursuant to its authority under Section 4(c) of the Act and subject to the conditions below, hereby permits eligible swap participants to submit for clearing, and FCMs and CME to clear, the following OTC agricultural swap contracts (eligible products):

(a) Corn basis swap contracts for the following regions:

- (i) Northeastern Iowa;
- (ii) Northwestern Iowa;
- (iii) Southern Iowa;
- (iv) Eastern Nebraska;
- (v) Eastern South Dakota; and
- (vi) Southern Minnesota.

(b) Corn calendar swap contracts.

(c) Wheat calendar swap contracts.

(d) Soybean calendar swap contracts.

(2) The Commission, pursuant to its authority under Section 4d of the Act and subject to the conditions below, hereby permits CME and clearing members of CBOT that are registered FCMs, acting pursuant to this order, to hold money, securities, and other property, used to margin, guarantee, or secure cleared-only transactions in eligible products (cleared-only contracts), and belonging to customers that are eligible swap participants, with other customer funds used to margin, guarantee, or secure trades or positions in commodity futures or commodity option contracts executed on or subject to the rules of a contract market designated pursuant to Section 5 of the

²⁵ 44 U.S.C. 3507(d).

²⁶ 7 U.S.C. 19(a).

Act, in a customer segregated account or accounts maintained in accordance with Section 4d of the Act (including any orders issued pursuant to Section 4d(a)(2) of the Act) and the Commission's regulations thereunder, and all such customer funds shall be accounted for and treated and dealt with as belonging to the customers of the CBOT clearing member, consistent with Section 4d of the Act and the regulations thereunder.

(3) This order is subject to the following conditions:

(a) The contracts, agreements, or transactions subject to this order shall be executed pursuant to the requirements of Part 35 of the Commission's regulations, as modified herein, and shall be limited to the eligible products enumerated in this order.

(b) All eligible products shall be submitted for clearing by a CBOT clearing member to CME pursuant to CBOT and CME rules.

(c) Each cleared-only contract shall be marked to market on a daily basis, and final settlement prices shall be established in accordance with CBOT rules.

(d) CME shall apply its margining system and calculate performance bond rates for each cleared-only contract in accordance with its normal and customary practices.

(e) CME shall apply appropriate risk management procedures with respect to transactions and open interest in the cleared-only contracts. CME shall conduct financial surveillance and oversight of CBOT members clearing the eligible products, and it shall conduct oversight sufficient to assure CME that each such member has the appropriate operational capabilities necessary to manage defaults in such contracts. CME and clearing members of CBOT, acting pursuant to this order, shall take all other steps necessary and appropriate to manage risk related to clearing eligible products.

(f) CBOT shall make available open interest and settlement price information for the cleared-only contracts on a daily basis in the same manner as for contracts listed on CBOT.

(g) CBOT shall establish and maintain a coordinated market surveillance program that encompasses the cleared-only contracts and the corresponding futures contracts listed by CBOT on its designated contract market.

(h) CBOT shall adopt speculative position limits for each of the cleared-only contracts that are the same as the limits applicable to the corresponding futures contracts pursuant to Commission Regulation 150.2.

(i) The cleared-only contracts shall not be treated as fungible with any contract listed for trading on CBOT.

(j) Each FCM acting pursuant to this order shall keep the types of information and records that are described in Section 4g of the Act and Commission regulations thereunder, including but not limited to Commission Regulation 1.35, with respect to all cleared-only contracts. Such information and records shall be produced for inspection in accordance with the requirements of Commission Regulation 1.31.

(k) CBOT shall provide to the Commission the types of information described in Part 16 of the Commission's regulations in the manner described in Parts 15 and 16 of the Commission's regulations with respect to all cleared-only contracts.

(l) CBOT shall apply large trader reporting requirements to cleared-only contracts in accordance with its rules, and each FCM acting pursuant to this order shall provide to the Commission the types of information described in Part 17 of the Commission's regulations in the manner described in Parts 15 and 17 of the Commission's regulations with respect to all cleared-only contracts in which it participates.

(m) CME and CBOT shall at all times fulfill all representations made in their requests for Commission action under Sections 4(c) and 4d of the Act and all supporting materials thereto.

This order is based upon the representations made and supporting material provided to the Commission by CME and CBOT in connection with their requests. Any material change or omission in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its finding that the actions taken herein are appropriate. Further, in its discretion, the Commission may condition, suspend, terminate, or otherwise modify this order, as appropriate, on its own motion.

Issued in Washington, DC, on March 18, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9-6369 Filed 3-23-09; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD-2009-OS-0046]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to add a new System of Records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) proposes to add a new system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This Action will be effective without further notice on April 23, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 8899 E. 56th Street, Indianapolis, IN 46249-0150.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (720) 242-6631.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 16, 2009, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated December 12, 2000, 65 FR 239.

Dated: March 18, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T5040

SYSTEM NAME:

Call Recording Application Records.

SYSTEM LOCATION:

Defense Finance and Accounting Service, Cleveland, Anthony J. Celebrezze Federal Building (Room 1669), 1240 E. 9th Street, Cleveland, OH 44199-2055.