(section 36.5); registration requirements (section 36.36) and risk disclosure (section 36.7). It also reserves the antimanipulation prohibitions in the Act and Commission Rule 33.9 and provides for anti-fraud prohibitions in addition to those otherwise applicable to section 4(c) contract market transactions under the Act and Commission Rule 33.10.

Finally, although the Commission requested comment relating to the advisability of making certain conforming changes to its Part 35 Exemption of Swap Agreements, the Commission has determined to make no changes herein to Part 35.

EFFECTIVE DATE: November 1, 1995.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis; Alan L. Seifert, Deputy Director, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets; or Ellyn S. Roth, Attorney, Office of the General Counsel; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5260, 418–5450, and 418–5120, respectively.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Futures Trading Practices Act of 1992, P.L. No. 102–546 (October 28, 1992) ("1992 Act"), added new subsections (c) and (d) to section 4 of the Act. These new provisions authorize the Commission, by rule, regulation, or order, to exempt any agreement, contract or transaction, or class thereof, when entered into between "appropriate persons" from the exchange-trading, or any other, requirement of the Act other than section 2(a)(1)(B), 7 U.S.C. 2.1

Specifically, Section 4(c)(1), 7 U.S.C. 6(c)(1), provides:

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 as a contract market for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or

Before granting such an exemption, the Commission must determine that its action would be consistent with the public interest and would not have a material adverse effect on the ability of the Commission to discharge its regulatory responsibilities or of any contract market to discharge its self-regulatory responsibilities under the Act.²

II. The Petitions for Exemptive Relief

On August 16, 1993, the Commission published in the Federal Register notice of, and a request for comment on, petitions for exemption under section 4(c) of the Act submitted by the CME and the CBT.3 As detailed in that Federal Register notice, the CME sought an exemption from most of the provisions of the Act and Commission regulations with regard to the purchase and sale of its Rolling SpotTM futures and options contracts. The CBT's petition, submitted on June 30, 1993 ("section 4(c) petition"), and subsequently joined by the New York Mercantile Exchange ("NYMEX"),4 requested that the Commission establish a "professional trading market exemption" from most of the provisions of the Act and regulations for trading in any instrument of the CBT and other boards of trade, including those designated previously as contract markets by the Commission. Under both petitions, trading in exempted instruments would have been limited to certain participants, and trades would have been cleared through an exchange

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), or from any other provision of this Act (except Section 2(a)(1)(B)), if the Commission determines that the exemption would be consistent with the public interest.

clearing system approved by the Commission.

The substance of the comments on the petitions is discussed in the Notice of Proposed Rulemaking, 59 FR 54139 at 54140–54141 (Oct. 28, 1994). The CBT, as part of its comments responding to the Notice of Proposed Rulemaking, offered several amendments to its section 4(c) petition. Of these, the most notable would limit the transactions eligible for exemptive relief to "swap agreements" as defined by Commission Rule 35.1(b).5

III. The Proposed Rules

In light of the comments received on the exchange petitions, and based on its own analysis, the Commission proposed a new Part 36 of its rules.⁶ The proposed rules would establish a pilot program to provide more streamlined procedures for listing new exchange-traded products and greater flexibility in the trading procedures for those products, the offer and sale of which would be limited to specified categories of individuals or entities. In addition, the proposed rules would provide greater flexibility to qualified market users in certain areas, particularly relating to registration and account opening procedures.

A. Duration and Scope of Exemption

The Commission proposed to implement these rules under the framework of a three-year pilot program, providing the exchanges and the Commission an opportunity to test whether actual trading under the proposed rules, in fact, was, and remained, in the public interest, and to determine the effect of such trading on the integrity of the marketplace as a whole. The Commission specifically requested comment on the concept and feasibility of such a pilot program. Given the pilot nature of this program, the Commission also proposed that the exemption could be revoked at any time, following notice and an opportunity for hearing, upon a determination that the continued operation of the exemption was no longer consistent with the public interest.

With regard to the scope of the exemption, proposed section 36.1(b) provided that boards of trade listing section 4(c) contract market transactions for trading would be deemed to be "contract markets" which must comply with all provisions of the Act and

¹Section 2(a)(1)(A) of the Act grants the Commission exclusive jurisdiction over "accounts, agreements (including any transaction which is of the character of * * * an 'option' * * * *), and transactions involving contracts of sale of a commodity for future delivery traded or executed on a contract market * * * or any other board of trade, exchange, or market. * * * " 7 U.S.C. 2. The CEA and Commission regulations require that transactions in commodity futures contracts and commodity option contracts, with narrowly defined exceptions, occur on or subject to the rules of contract markets designated by the Commission.

 $^{^2}$ Specifically, Section 4(c)(2), 7 U.S.C. 6(c)(2), states:

The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) 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 to discharge its regulatory or self-regulatory duties under this Act.

³58 FR 43414 (Aug. 16, 1993); 58 FR 44402 (Aug. 20, 1993) (correction); 58 FR 52948 (Oct. 13, 1993) (extension of comment period to Dec. 15, 1993).

⁴By letter dated September 20, 1994, subsequent to the close of the comment period, the NYMEX joined in the CBT's petition.

⁵ See Comment letter of the Board of Trade of the City of Chicago, dated December 13, 1994.

⁶59 FR 54139 (Oct. 28, 1994); 59 FR 64359 (Dec. 14, 1994) (extension of comment period to January 1, 1995)