Commission regulations, except for those provisions which are "specifically inconsistent" with the proposed rules. Transactions in these instruments were proposed to be limited to "eligible participants," the definition of which was based upon the list of "appropriate persons" set forth in section 4(c)(3) (A) through (J) of the Act, with certain revisions tailored to this particular market and reflecting the Commission's experience in applying similar concepts in the context of other exemptions. In this regard, the Commission asked commenters to address the issue of whether certain of the proposed revisions should be applied to the Commission's previously-granted exemption under Part 35,7as well.

Proposed section 36.2 limited the potential breadth of the exemption, specifying that section 4(c) contract market transactions must be: (1) cashsettled, or that delivery be by "means other than the transfer or receipt of any commodity, except a major foreign currency;" (2) cleared through a clearing organization subject to Commission oversight; and, (3) based on commodities other than the agricultural commodities enumerated in section 1a of the Act, except for a broad-based index thereof. Proposed section 36.2(a)(4) further would have limited section 4(c) contract market transactions to those transactions which could "reasonably be distinguished" based upon the contract's hedging function or pricing function from futures or option contracts already designated by the Commission at the time of application to trade a section 4(c) contract market transaction.8 Finally, any transaction

subject to section 2(a)(1)(B) of the Act, 7 U.S.C. 2, including stock index futures contracts, was proposed to be excluded from the scope of the exemptive rules.

B. Trading Rules and Procedures

Section 36.3 proposed to permit section 4(c) contract markets greater flexibility in trading procedures and systems and to establish a streamlined procedure for Commission review of the contract market rules implementing those procedures. As proposed, section 36.3 would have permitted significant flexibility for trading procedures and systems. In particular, by permitting upstairs or other forms of off-floor execution if certain broad criteria were met, the proposed rule departed profoundly from current regulatory constraints. The limiting criteria included: meeting certain Commission recordkeeping and audit trail requirements; maintaining customer protection standards under Commission Rules 155.2, 155.3, and 155.4, to the extent applicable; providing for posttrade transparency of the transactions, including specified reporting requirements identifying section 4(c) contract market transactions from nonsection 4(c) contract market transactions; and clearing such transactions on the same schedule as products traded on non-section 4(c) contract markets. Further, any submission made under the proposed rule would have been required to describe fully the contract market procedures and systems to assure compliance with sections 4b and 4c(a) of the Act, which prohibit the abuse of customer orders. Such abuses include frontrunning customer orders, misuse of information, wash sales and fictitious trades. Procedurally, the Commission proposed that such trading rules be submitted for its review prior to being put into effect. Absent notification to the contrary, these rules would become effective ten days after receipt.

C. Listing Procedures

The Commission proposed that section 4(c) contract market transactions be listed for trading ten days after submission to the Commission of their terms and conditions, unless the Commission notified the board of trade in writing during that period that the transactions did not meet the conditions specified by the rules. In that event, the terms and conditions of the transaction would be subject to the usual rule approval procedures under section 5a(a)(12)(A) of the Act.

contracts; and foreign currency forward futures contracts and options thereon.

D. Reporting Requirements

The Commission proposed that, in lieu of its current reporting requirements under Parts 16–19 of its rules, section 4(c) contract markets, futures commission merchants ("FCMs"), and large traders comply with reporting requirements specifically geared toward these markets. Most notably, in addition to publishing daily information on total open interest, transactions, and prices for each commodity or type of contract, the Commission proposed that section 4(c) contract markets provide open interest and transaction information for each clearing member similar to that required under current Rule 16.00. However, although required to be maintained in a manner that is readily accessible, contract markets would be required to supply information concerning large traders conducting section 4(c) contract market transactions only on call by the Commission. The actual frequency of those reports would be determined based upon market developments.

E. Special Temporary License, Registration or Principal Listing Procedures; Risk Disclosure Requirements

The Commission also proposed, in section 36.6, to allow special registration procedures for persons associated with an FCM or introducing broker ("IB") whose activities were limited to instruments specified by the Commission in an Appendix to Part 36. These special procedures would be established upon the petition of a contract market and under approved procedures of the National Futures Association ("NFA"). The Commission noted in the Notice of Proposed Rulemaking that particular areas of flexibility in the registration process might include the waiver of NFA's fingerprint requirement and acceptance of alternative proficiency tests. With regard to risk disclosure, the Commission proposed, when accounts for section 4(c) contract market transactions were opened, allowing the use of disclosure statements appropriate to a customer's expertise and financial capacity and tailored to a particular product. This disclosure requirement would have replaced the basic risk disclosure statements generally required when opening accounts. See, e.g., Commission Rules 1.55, 1.65, 33.7, and 190.10.

⁷Part 35 of the Commission's rules exempts swap agreements, as defined in Section 35.1(b), from,

all provisions of the Act (except * * * Sections 2(a)(1)(B), 4b, and 4o of the Act and § 32.9 of this chapter * * *, and the provisions of Sections 6(c) and 9(a)(2) of the Act to the extent these provisions prohibit manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market), provided the following terms and conditions are met:

⁽a) the swap agreement is entered into solely between eligible swap participants * * *;

⁽b) the swap agreement is not part of a fungible class of agreements that are standardized * * * *;

⁽c) the creditworthiness of any party having an actual or potential obligation under the swap agreement would be a material consideration

* * * * and

⁽d) the swap agreement is not entered into and traded on or through a multilateral transaction execution facility.

⁸ As proposed, Section 36.2(a)(4) specifically identified the following as eligible Section 4(c) contract market transactions: flexible commodity options (which trade under contract market option rules, but are not separately designated); contracts in foreign currency known as Rolling Spot™ Contracts; five- and ten-year interest rate swaps