

persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Amendments

CME proposes to adopt, on a permanent basis, CME Rule 930.B.2.b.(3) (herein referred to as "Market Maker Exclusion"). On November 8, 2002, the Commission approved the Market Maker Exclusion on a pilot basis, ending May 7, 2003 (the "Pilot").³ CME believes that permanent approval of the Market Maker Exclusion is consistent with the jointly adopted margin rules of the Commission and the Commodity Futures Trading Commission ("CFTC") (collectively, "Commissions").

Below is the text of the proposed rule change that CME proposes to adopt on a permanent basis.

* * * * *

930.B. Performance Bond Rates

1. Non-Security Futures (No Change).

2. Security Futures

a.-b. (1) and (2) (No change).

(3) The Market Maker:

(i) Is assigned to a group of Security Futures Contracts listed on the Exchange that is either unlimited in nature ("Unlimited Assignment"); or, is assigned to no more than 20% of the Security Futures Contracts listed on the Exchange ("Limited Assignment");

(ii) At least 75% of the Market Maker's total trading activity in Exchange Security Futures Contracts is in its assigned Security Futures Contracts, measured on a quarterly basis;

(iii) During at least 50% of the trading day the Market Maker has bids or offers in the market that are at or near the best market, except in unusual market conditions as determined by the Exchange (such as a fast market in either a Security Futures Contract or a security underlying a Security Futures Contract), with respect to at least 25% (in the case of an Unlimited Assignment) or at least one (in the case of a Limited Assignment) of its assigned Security Futures Contracts; and

(iv) The requirements in (ii) and (iii) are satisfied on (a) at least 90% of the trading days in each calendar quarter by Market Makers who have undertaken an Unlimited Assignment; or (b) at least 80% of the trading days in each calendar quarter by Market Makers who have undertaken a Limited Assignment; or (c) on at least 80% of the trading days

in each calendar quarter by Market Makers who have undertaken either an Unlimited Assignment or Limited Assignment but where the Exchange is listing four (4) or fewer Security Futures Contracts.

For purposes of clauses (1) and (2) above, beginning on the 181st calendar day after the commencement of trading of Security Futures Contracts on the Exchange, a "meaningful proportion of the total trading volume of Security Futures Contracts on the Exchange" shall mean a minimum of 20% of such trading volume.

Any Market Maker that fails to comply with the applicable Rules of the Exchange, CFTC Regulations 41.41 through 41.49 and SEC Regulations 242.400 through 242.406 shall be subject to disciplinary action in accordance with Chapter 4. Appropriate sanctions in the case of any such failure shall include, without limitation, a revocation of such Market Maker's registration as a Security Futures Dealer. c.-d. (No Change).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the proposed Rule Change

In its filing with the Commission, the CME included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CME has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CME proposes to adopt, on a permanent basis, the Market Maker Exclusion, which sets forth the standards under which a CME member may be excluded from the Exchange's margin requirements as a "market maker." The CME believes that the proposed rule change is consistent with Commission Rule 400(c)(2)(v) under the Act⁴ and CFTC Rule 41.42(c)(2)(v),⁵ which establish standards by which members of national securities exchanges may qualify as Security Futures Dealers and therefore be

excluded from customer margin requirements for security futures.

The CME notes that the Market Maker Exclusion has not actually been deployed in practice at the Exchange to date. In addition, the CME notes that the Commission has received no comment letters on this matter during the pilot period. The CME proposes no changes to the Market Maker Exclusion and, therefore, CME proposes to adopt the proposed rule change on a permanent basis.

2. Statutory Basis

The CME believes that the proposed rule change is consistent with section 6(b)(5) of the Act⁶ in that it promotes competition and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The CME believes that the proposed rule change is designed to accomplish these goals by permitting members to trade security futures, as permitted under the Commission's Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CME does not believe that the proposed rule change will have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited and none have been received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

³ See Securities Exchange Act Release No. 46792 (November 8, 2002), 67 FR 69273 (November 15, 2002).

⁴ 17 CFR 242.400(c)(2)(v).

⁵ 17 CFR 41.42(c)(2)(v).

⁶ 15 U.S.C. 78f(b)(5).