

the costs and benefits of the order in light of the specific provisions of section 15(a) of the Act.

A. Protection of Market Participants and the Public

The order would permit, for a two-year period commencing on the date of its publication in the **Federal Register**, a registered floor broker or floor trader to participate in the OTC markets, subject to a guarantee from an Exchange clearing member registered as an FCM, as well as to Exchange oversight and certain trading restrictions. Accordingly, there should be no effect on the Commission's ability to protect market participants and the public.

B. Efficiency and Competition

The order is expected to benefit efficiency and competition by, among other things, increasing the flow of trading information to the Exchange, enhancing the ability of floor members to make tight markets in products that compete against standardized look-alike contracts traded in the OTC markets, and increasing the pool of potential counterparties for OTC market participants.

C. Financial Integrity of Futures Markets and Price Discovery

The order should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity of the futures and options markets. The order may have a favorable effect in creating benefits with respect to the price discovery function of such markets.

D. Sound Risk Management Practices

The order should have no effect, from the standpoint of imposing costs, on the risk management practices of the futures and options industry. Clearing member FCMs that would, on a case-by-case basis, be extending guarantees to floor members for OTC trading have developed risk management practices in connection with extending similar guarantees to floor members for trading executed at the Exchange. Because the scope of permissible trading would be limited to OTC transactions that subsequently are cleared at the Exchange, clearing member FCMs could apply existing risk management practices and procedures. The order would enhance the ability of floor members to manage the risks associated with the positions they establish in Exchange contracts.

E. Other Public Interest Considerations

The order is consistent with one of the purposes of the Act as articulated in

Section 3 in that it would promote responsible innovation and fair competition among boards of trade, other markets and market participants.

V. Order

Upon due consideration, and pursuant to its authority under section 1a(12)(C) of the Act, the Commission hereby determines that a NYMEX member who is registered with the Commission as a floor broker or a floor trader, when acting in a proprietary trading capacity, is deemed to be an eligible contract participant and may enter into Exchange-specified OTC contracts, agreements or transactions in an exempt commodity under the following conditions:

1. This Order is effective for two years commencing on the date of its publication in the **Federal Register**.

2. The contracts, agreements or transactions must be executed pursuant to section 2(h)(1) of the Act.

3. The floor broker or floor trader must have obtained a financial guarantee for the contracts, agreements or transactions from a NYMEX clearing member that:

(a) Is registered with the Commission as an FCM; and,

(b) Clears the OTC contracts, agreements or transactions thus guaranteed.

4. Permissible contracts, agreements or transactions must be limited to trading in a commodity that either:

(a) Is listed only for clearing at NYMEX or

(b) Is listed for trading and clearing at NYMEX and NYMEX's rules provide for exchanges of futures for swaps in that contract, and each OTC contract, agreement or transaction executed pursuant to the order must be cleared at NYMEX.

5. The floor broker or floor trader may not enter into OTC contracts, agreements or transactions with another floor broker or floor trader as the counterparty for contracts that are listed for trading on the Exchange.

6. NYMEX must have appropriate compliance systems in place to monitor the OTC contracts, agreements or transactions of its floor brokers and floor traders.

7. Clearing members that guarantee and clear OTC contracts, agreements or transactions pursuant to this Order must have and maintain at all times minimum working capital of at least \$20 million; provided, however, that during the first 18 months following publication of the order a clearing member must have and maintain minimum working capital of at least:

(a) \$5 million during the first twelve months of the two-year period; and

(b) \$10 million during the thirteenth through eighteenth months of the two-year period.

If, during the 18-month period, a clearing member does not maintain working capital of at least \$20 million, it must further reduce its working capital, to determine if it is in compliance with paragraphs 7(a) or 7(b) of the order, by 100 percent of the NYMEX margin requirements for the OTC contracts, agreements or transactions of floor brokers and floor traders that it is guaranteeing pursuant to the order. A clearing member must compute its working capital in accordance with exchange rules and generally accepted accounting principles consistently applied.

8. NYMEX will submit a report to the Commission reviewing its experiences and the experiences of its floor brokers, floor traders and clearing members under this Order, including the levels of OTC trading and related clearing activity; the number of floor brokers, floor traders and clearing members who participated in these activities; and an evaluation of whether the Commission should extend this Order and, if so, whether any modifications should be made thereto. This report will address the first eighteen months of this Order's two-year period, and must be submitted to the Commission no later than 30 days after the conclusion of those eighteen months.

This Order is based upon the representations made and supporting material provided to the Commission by NYMEX. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the provisions set forth herein are appropriate. Further, if experience demonstrates that the continued effectiveness of this Order would be contrary to the public interest, the Commission may condition, modify, suspend, terminate or otherwise restrict the provisions of this Order, as appropriate, on its own motion.

Issued in Washington, DC, on January 29, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

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