

contracts perform a significant price discovery function for transactions in the cash market for the commodity underlying the contracts, daily information on settlement prices, volume, open interest, and opening and closing price ranges for contracts traded on the facility. Section 5d(d) requires exempt boards of trade ("EBOTs") to disseminate publicly on a daily basis information on trading volume, opening and closing ranges, open interest, and other trading data appropriate to the market if the Commission determines that the EBOT is a significant source of price discovery for transactions in the cash market for the commodity underlying the contracts.

As noted, the Act only stipulates that an ECM should make available "price, trading volume and other trading data to the extent appropriate." However, as also noted above, this requirement is unclear as to what precisely is intended to be made available to the public by ECMs, especially with regard to the term "price." Based on the information that is required to be made available by a comparably regulated market, the EBOT, the Commission requests comment on the reasonableness of requiring similar information, including trading activity measures, price information, and certain contextual information. The Commission also requests comment on what contextual information should be made available in order to assure that the public can accurately interpret the meaning of the trading activity and price information.

Specifically, the Commission is requesting comment on a requirement that the ECMs serving a price discovery function publicly disseminate the following information on a daily basis:

Contextual information:

- Contract terms and conditions or product descriptions; and
- Trading conventions, mechanisms, and practices.

Trading activity information:

- Trading volume; and
- Open interest, if available.

Price information:

- Opening and closing prices or price ranges;
  - High and low prices;
  - A volume-weighted average price;
- or
- Any other price information approved by the Commission.<sup>17</sup>

<sup>17</sup> The section 2(h)(3) market may satisfy the dissemination requirements by placing the information on its website, providing the information to a financial information service, or using a combination of these media. Furthermore, the section 2(h)(3) market may disseminate such additional information as it believes is appropriate for price discovery purposes. A section 2(h)(3)

The types of contextual, trading activity and price information that the Commission proposes to require to be published potentially would be useful to the price basing process; *i.e.*, this information potentially would be useful for commercial entities that do not participate directly in a market, but use the market's prices as a basis for setting prices for cash market transactions. The reasoning regarding the individual elements of the proposed market information reporting requirements is discussed below.

*Contextual information:* Information regarding the terms and conditions of the contracts traded on a § 2(h)(3) market and the market's trading rules is necessary to facilitate the public's accurate interpretation of the meaning of data on prices and trading activity reported by markets. This information collectively defines the items being traded on a market as well as a contract's pricing basis and therefore is critical to those who would gather information for purposes of risk management, price basing, or speculation in the market. Ill-defined products and trading conventions will not result in prices with sufficient specificity to be useful for such purposes.

*Trading activity:* It appears appropriate to require that exempt commercial markets that serve a significant price discovery function disseminate information related to activity in the market, such as daily trading volume data and open interest (if such information is available). In this regard, in futures and option markets, trading activity most often is measured by volume of trading or open interest. Volume of trading, which is required by statute to be provided by exempt commercial markets, is the number of contracts transacted in a commodity in a market over a specified period of time, generally defined as a day. Daily trading volume data provide an indication of the level of past interest in trading in a particular market. Markets with consistently high trading volumes are generally considered to be more liquid<sup>18</sup> than those with lower levels of

market may also publish all of the information specified in proposed rule 36.3(c)(2)(iv) whether or not the Commission has made a price discovery determination applicable to that market under rule 36.3(c)(2)(iii). Such voluntary dissemination by a section 2(h)(3) market may, in appropriate circumstances, obviate the need for the market to notify the Commission and for the Commission to make a price discovery determination.

<sup>18</sup> Liquidity is a measure of a market's ability to absorb large orders within a short period of time without requiring a substantial change in price. Liquid markets are often described as "broad" and/or "deep," whereas illiquid markets are often

volume. Thus, the availability of such information, which can serve as a measure of the liquidity of the market on which prices are determined, is important for the interpretation of the reliability of the prices on the market and the general availability of this market statistic is important for an exempt commercial market's continued functioning as a price discovery mechanism.

Open interest is defined as the number of open contracts observed at the close of trading each day. Like trading volume, open interest also is often regarded as an indicator of market liquidity, as higher levels of open interest indicate, in part, traders' confidence that their positions can be readily liquidated without materially affecting the price they receive for such a transaction. Moreover, as noted, imposing a requirement that exempt commercial markets publish open interest data if available,<sup>19</sup> as well as data on trading volume, is consistent with the Act's requirements for EBOTs that are determined by the Commission to be serving a significant price discovery function.

*Price information:* With regard to price information, both the Act and the logic of price basing require access to price data. Reliable price information is also critical for speculative trading. In considering price-reporting requirements, the Commission has focused on the reporting of delayed price information, rather than real-time price data. In this regard, the Commission notes that the Act does not appear to require publication of real-time price data. The Commission also notes that many exchanges charge fees for real-time market data (usually bids, offers and transaction prices), and that such fees can be an important source of exchange revenues. The exchanges also make certain market summary data freely available to the public on a delayed basis (where the delay can be as little as 10 minutes). This delayed market information generally includes opening and closing prices or price ranges, daily high and low prices, settlement prices, daily trading volume

described as "thin." The liquidity of a market is an indication of the quality or the reliability of the prices determined thereon.

<sup>19</sup> Open interest data generally would be available for markets such as Designated Contract Markets ("DCMs"), which provide an exclusive forum for offset of positions thereon. However, the Commission understands that, unlike positions on a DCM—where contracts entered into on the exchange can only be offset on that exchange—positions established on an ECM can be offset away from the ECM, without the ECM's knowledge. Therefore, it might be impossible for an ECM to maintain accurate open interest data.