

“CFTC”) is proposing to issue an order vacating ICC’s designation as a Derivatives Clearing Organization (“DCO”).

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to “ICC”.

DATES: Comments must be received by December 23, 2003.

FOR FURTHER INFORMATION CONTACT: R. Trabue Bland, Attorney, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430. E-mail: tbland@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 5b(d) of the Commodity Exchange Act¹ provides that DCOs that clear contracts for boards of trade designated by the Commission as contract markets prior to a certain date are deemed registered with the Commission. Under section 1a(29)(C) of the Act, registered DCOs are “registered entities.” Section 7 of the Act² provides that “any person that has been designated or registered as a registered entity in the manner herein provided may have such designation or registration vacated and set aside by giving notice to the Commission requesting that its designation or registration as a registered entity be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when vacation of designation or registration shall take effect.” ICC has requested that the vacation of its registration take place before the expiration of the ninety-day period. In response to the request, the Commission is proposing to exempt ICC from the notice requirements of section 7 of the Act pursuant to section 4(c) of the Act,³ which gives the Commission broad exemptive authority and then vacate ICC’s registration.

II. Request for Vacation of Registration

A. Background

By letter to the Division of Clearing Intermediary Oversight, the ICC

submitted a request for the vacation of registration.⁴ The ICC is a registered DCO under section 5b(d) of the Act and thus a registered entity as defined in section 1a(29)(C) of the Act. The ICC is a wholly owned subsidiary of The Options Clearing Corporation (“OCC”), another registered DCO. For the past several years, ICC has not engaged in any clearing activities, and thus the OCC wishes to merge the ICC into the OCC. At the completion of the merger, ICC will cease to exist as a corporate entity. Therefore, the ICC requests that the Commission vacate the registration of ICC as a DCO.

Section 7 of the Act allows “any person that has been designated or registered as a registered entity in the manner herein provided may have such designation or registration vacated and set aside by giving notice to the Commission requesting that its designation or registration as a registered entity be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when vacation of designation or registration shall take effect.” ICC served notice to the Commission on November 17, 2003. However, the merger of ICC and OCC will take place before the end of the calendar year 2003, which will occur before the expiration of the ninety-day notice requirement required by section 7 of the Act. Therefore, at ICC’s request, pursuant to section 4(c) of the Act, the Commission proposes to exempt ICC from section 7’s 90-day notice requirement.

B. Public Interest Considerations

This proposed order is waiving the section 7 90-day notice requirement pursuant to section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission “may, by rule, regulation or order, exempt any class of agreements, contracts or transactions, including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction, from the contract market designation requirement of section 4(a) of the Act, or any other provision of the Act * * * if the Commission

determines that the exemption would be consistent with the public interest.”⁵

As explained above, the ICC has not operated as a clearing entity in a number of years. The merger of ICC into OCC will allow the OCC to streamline its operations. The Commission believes that exempting ICC from the 90-day requirement of section 7 is consistent with the public interest, is consistent with the purposes of the Act and would have no adverse effect on the ability of OCC to fulfill its self-regulatory responsibilities imposed by the Act.

III. Conclusion

After consideration of the ICC request, the Commission is proposing to exempt ICC from the 90-day notice requirement of section 7 of the Act. Furthermore, the Commission proposes to vacate the Intermarket Clearing Corporation’s registration as a derivatives clearing organization upon completion of the merger between ICC and OCC.

The Commission specifically invites comment on whether it should vacate the registration of ICC and whether the Commission should exempt ICC from the 90-day notice requirement of section 7. In addition to issues specified above, the Commission welcomes comment on any aspect of the proposed order.

IV. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to “consider the costs and benefits” of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to

¹ 7 U.S.C. 7a–1 (2003).

² 7 U.S.C. 11 (2003).

³ 7 U.S.C. 6c (2003).

⁴ The letter, dated November 17, 2003, was sent to John Lawton, Deputy Director and Chief Counsel of the Division of Clearing and Intermediary Oversight.

⁵ See, e.g. 65 FR 77993 (December 13, 2000) (adopting final rules pursuant to the 4(c) exemption).