

is hereby given that 1-year letters of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued on May 4, 1999, to the Newfield Exploration Company and to BP Amoco; on May 7, 1999, to the Amerada Hess Corporation; and on June 3, 1999, to the Shoreline Exploration Corporation and the EEX Corporation, all from Houston, TX.

**ADDRESSES:** The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713-2055 or David Bernhart, Southeast Region (727) 570-5312.

**SUPPLEMENTARY INFORMATION:** Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139), and remain in effect until November 13, 2000.

Issuance of these letters of authorization are based on a finding that the total takings will have a negligible

impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: June 3, 1999.

**Hilda Diaz-Soltero,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 051899A]

#### Marine Mammals; File No. 930-1486

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that U.S. Geological Survey, Biological Resources Division, Western Ecological Research Center, 6924 Tremont Road, Dixon, CA 95620 (Principal Investigator: Mr. Dennis Orthmeyer) has been issued a permit to inadvertently harass various cetacean and pinniped species during aerial surveys for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289); and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213 (562-980-4001).

**FOR FURTHER INFORMATION CONTACT:** Ruth Johnson or Sara Shapiro 301/713-2289.

**SUPPLEMENTARY INFORMATION:** On March 29, 1999, notice was published in the **Federal Register** (64 FR 14886) that a request for a scientific research permit to take marine mammals had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 222-226), and the Fur Seal Act of

1966, as amended (16 U.S.C. 1151 *et seq.*).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 3, 1999.

**Jeannie Drevenak,**

*Acting Chief, Permits and Documentation  
Division, Office of Protected Resources,  
National Marine Fisheries Service.*

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## COMMODITY FUTURES TRADING COMMISSION

### Chicago Board of Trade Petition for Exemption From the Statutory Dual Trading Prohibition in the Ten-Year U.S. Treasury Note Futures Contract Traded on the Project A Electronic Trading System

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Amended order.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is amending its February 26, 1999 Order granting the Chicago Board of Trade ("CBT") or "Exchange" an exemption from the statutory prohibition against dual trading in the U.S. Treasury Bond futures contract ("T-Bond") traded on its Project A electronic trading system to include the Ten-Year U.S. Treasury Note ("Ten-Year T-Note") futures contract traded on Project A.

**DATES:** This Order is to be effective June 4, 1999.

**FOR FURTHER INFORMATION CONTACT:** Rachel F. Berdansly, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st St., NW., Washington, DC 20581; telephone (202) 418-5490.

**SUPPLEMENTARY INFORMATION:** On February 26, 1999, the Commission issued an Order granting CBT an exemption from the statutory dual trading prohibition for its T-Bond futures contract as traded on the Exchange's electronic trading system, Project A.<sup>1</sup> In issuing the Order, the Commission found that CBT met the standards for granting a dual trading

<sup>1</sup> 64 FR 10450 (March 4, 1999). A copy of this Order is attached as Appendix A.

exemption contained in section 4j(a) of the Commodity Exchange Act ("Act") and Commission Regulation 155.5 with regard to Project A T-Bond futures.

By letter dated March 15, 1999, shortly after the Order was issued, CBT notified the Commission that its Ten-Year T-Note futures contract traded on Project A had become an affected contract market as well, and supplemented its Petition for Exemption from the Dual Trading Prohibition to include that contract.<sup>2</sup> The Exchange has represented by letter dated April 20, 1999, that, with respect to the February 26, 1999 Order exempting Project A T-Bond futures from the dual trading prohibition, there have been no material changes concerning the operation of the Project A system or to CBT's trade monitoring system as applicable thereto. Therefore, the Commission finds that CBT meets all relevant standards for granting a dual trading exemption for the Ten-Year T-Note future contract as traded on Project A.

Accordingly, on this date, the Commission hereby amends its February 26, 1999 Order granting CBT's Petition for Exemption from the Dual Trading Prohibition for trading on Project A of its electronically traded U.S. Treasury Bond futures contracts to include an exemption for CBT's electronically traded Ten-Year U.S. Treasury Note futures contract.

For this exemption to remain in effect, CBT must demonstrate on a continuing basis that it meets the relevant statutory and regulatory requirements. The Commission will monitor continued compliance through its rule enforcement review program and any other information it may obtain about CBT's program.

The provisions of this Order shall be effective on the date on which it is issued and shall remain in effect unless and until its is revoked in accordance with section 8e(b)(3)(B) of the Commodity Exchange Act, 7 U.S.C. 12e(b)(3)(B). If other CBT contracts electronically traded on Project A become affected contracts after the date of this Order, the Commission may expand this Order in response to an

<sup>2</sup> An "affected contract market" is a contract market with an average daily volume equal to or in excess of 8,000 contracts for each of four quarters during the most recent volume year. Commission Regulation 155.5(a)(9). See section 4j(a)(4) of the Act. Under section 4j(a) of the Act and Regulation 155.5(b), the dual trading prohibition applies to each affected contract market. The Commission, therefore, must consider separately each affected contract market. As noted by the Commission in promulgating Regulation 155.5, a contract market trading on an exchange floor will be considered separate from a contract market in the same commodity trading on a screen-based system such as Project A. See 58 FR 40335 (July 28, 1993).

updated petition that includes those contracts.

*It is so ordered.*

Dated: June 4, 1999.

**Jean A. Webb,**

*Secretary to the Commission.*

#### APPENDIX A—COMMODITY FUTURES TRADING COMMISSION

##### Chicago Board of Trade Petition for Exemption From the Dual Trading Prohibition in the U.S. Treasury Bond Futures Contract Traded on the Project A Electronic Trading System

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is granting the petition of the Chicago Board of Trade ("CBT" or "Exchange") for exemption from the prohibition against dual trading in the U.S. Treasury Bond futures contract traded on its Project A electronic trading system.

**DATES:** This Order is to be effective February 26, 1999.

**FOR FURTHER INFORMATION CONTACT:** Andrew S. Baer, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581; telephone (202) 418-5490.

**SUPPLEMENTARY INFORMATION:** On January 31, 1998, the Chicago Board of Trade ("CBT" or "Exchange") submitted a Petition for Exemption From the Dual Trading Prohibition for its affected U.S. Treasury Bond ("T-Bond") futures contract<sup>1</sup> as traded on the Exchange's electronic trading system, Project A. Upon consideration of this petition and other matters of record, the Commission hereby finds that CBT meets the standards for granting a dual trading exemption contained in section 4j(a) of the Act and Commission Regulation 155.5 with regard to Project A T-Bond futures.<sup>2</sup>

<sup>1</sup> An "affected contract market" is a contract market with an average daily volume equal to or in excess of 8,000 contracts for each of four quarters during the most recent volume year. Commission Regulation 155.5(a)(9). See section 4j(a)(4) of the Commodity Exchange Act ("Act"). Under section 4j(a) of the Act and Regulation 155.5(b), the dual trading prohibition applies to each affected contract market. The Commission, therefore, must consider separately each affected contract market. As noted by the Commission in promulgating Regulation 155.5, a contract market trading on an exchange floor will be considered separate from a contract market in the same commodity trading on a screen-based system such as Project A. See 58 FR 40335 (July 28, 1993). Therefore, Project A T-Bonds must be considered independently of the CBT's floor-traded T-Bond contract market, which was included in the Exchange's exemption petition for its affected open outcry contract markets.

<sup>2</sup> The burden to prove that the exemption standards of the Act and Commission regulations are met rests exclusively on the contract market. The dual trading provisions set forth in section 4j of the Act and the standards for trade monitoring systems provided in section 5a(b) of the Act were enacted as part of the Futures Trading Practices Act of 1992 ("FTPA"). Pub. L. 102-546, 101, 106 Stat.

Subject to CBT's continuing ability to demonstrate that it meets applicable requirements, the Commission specifically finds that CBT maintains a trade monitoring system for Project A which is capable of detecting and deterring, and is used on a regular basis to detect and deter, all types of violations attributable to dual trading and, to the full extent feasible, other violations involving the making of trades and execution of customer orders, as required by section 5a(b) of the Act and Commission Regulation 155.5. The Commission further finds that CBT's trade monitoring system for Project A T-Bonds includes audit trail and recordkeeping systems that satisfy sections 4j(a)(3) and 5a(b) of the Act and Commission Regulations 1.35 and 155.5.<sup>3</sup>

With respect to each required component of the trade monitoring system, the Commission finds as follows:

(a) Physical Observation of Trading Areas—The requirements of section 5a(b)(1)(A) of the Act are not relevant to Project A trading, insofar as Project A is a computerized, screen-based system and therefore has no floor.

(b) Audit Trail and Recordkeeping Systems—The Exchange's trade monitoring system for Project A T-Bonds satisfies the audit trail standards of section 5a(b)(1)(B) of the Act in that it is capable of capturing essential data on the terms, participants, and

3590 (1992). The FTPA's legislative history makes clear that the burden to prove that the exemptions standards are met rests upon the contract market. For instance, the 1992 House-Senate Conference Committee stated that "a board of trade may satisfy the initial burden of demonstrating that each of its designated contract markets complies with trade monitoring system requirements of section 5a(b) of the Act, subject to requests for further information by the Commission, by showing that it has maintained an ongoing record of compliance with those requirements." H.R. Conf. Rep. No. 102-978 at 53 (1992). The Conference Committee adopted the 1991 House Bill's (H.R. 707) dual trading provisions, with amendments relating to exemptions. *Id.* at 50. The 1991 Senate Bill (S. 207) similarly placed on the exchange the burden to demonstrate the ability of its systems to meet the standards and reiterated the view, previously expressed in the 1989 Senate Bill (S. 1729), that an exchange has the best access to its own records and therefore is in the best position to show that its systems are effective and satisfactory. S. Rep. No. 102-22 at 32 (1991); S. Rep. No. 101-191 at 39-40 (1989).

<sup>3</sup> 17 CFR 1.35, 155.5. Section 4j(a)(3) requires the Commission to exempt a contract market from the prohibition against dual trading upon finding that the monitoring system in place at the contract market satisfies the requirements of section 5a(b), governing audit trails and trade monitoring systems, with regard to violations attributable to dual trading at such contract market. If the trade monitoring system does not satisfy the requirements, section 4j(a)(3) requires the Commission to deny the exemption or in the alternative to exempt a contract market from the prohibition against dual trading on stated conditions upon finding that there is a substantial likelihood that a dual trading prohibition would harm the public interest in hedging or price basing and that corrective actions are sufficient and appropriate to bring the contract market into compliance with the standards set forth in section 5a(b). Regulation 155.5(b) prohibits floor brokers from dual trading in an affected contract market unless that contract market is exempted under Regulation 155.5(d).

sequence of transactions. The requirements of that Section regarding the capture of relevant data on unmatched trades and outrades are not relevant to Project A trading, as unmatched trades and outrades cannot occur on the Project A system. The Commission further finds that CBT accurately and promptly records the essential data on terms, participants, times (in increments of no more than one minute in length), and the sequence of Project A trades through a means that is unalterable, continual, independent, reliable, and precise, as required by section 5a(b)(3) of the Act. This includes the real-time submission of trades to clearing as they are matched by the system. Consistent with the guidelines to Commission Regulation 155.5, the Commission also finds that CBT has demonstrated the use of Project A T-Bond trade timing data in its surveillance systems for dual trading-related and other abuses.

The audit trail produced by Project A for T-Bond futures includes trade execution times that are presumptively 100 percent accurate (barring computer malfunction) and precise to within  $\frac{1}{100}$ th of a second. All trades are also recorded in the exact sequence of occurrence. Among other things, the order ticket timestamps required by Regulation 1.35(a-1) are automatically furnished by the system, independent of the person making the trade, as is the order number. Project A also automatically records the time at which a terminal operator enters an order, the time when an order is matched to make a trade, the time the system generates a confirmation message to a terminal operator, and the time of any changes to an order. Once entered, orders and records of changes to orders are unalterable and cannot be deleted. If an order cannot be entered immediately upon its receipt by a terminal operator, the order is recorded on a written order ticket, timestamped, and then entered when possible. For every Project A order, either this order ticket timestamp or the order entry time recorded by the system acts as the broker receipt time required by section 5a(b)(3)(B) of the Act.

CBT satisfies the requirements of section 5a(b)(1)(B) of the Act by maintaining an adequate recordkeeping system that is able to capture essential data on the terms, participants, and sequence of transactions executed on Project A. The Exchange uses such data as well as information on violations of such requirements on a consistent basis to bring appropriate disciplinary actions relating to Project A trading.

(c) Surveillance Systems and Disciplinary Action—As required by sections 5a(b)(1)(C), (D), and (F) of the Act, CBT uses information generated by its trade monitoring and audit trail systems on a consistent basis to bring appropriate disciplinary action for violations relating to the making of trades and execution of customer orders on Project A. In addition, CBT assesses meaningful penalties against violators.

On a daily basis, CBT reviews computerized surveillance exception reports to detect dual trading-related and other trading abuses on Project A. All relevant trade data are included in these reports. The

exception reports are designed to identify such suspicious activity as trading ahead, frontrunning, trading against, crossing orders, and wash trading. Since the introduction of side-by-side (simultaneous Project A and open outcry) trading of T-Bonds in September 1998, CBT has begun using a specialized exception report designed to identify certain trading ahead violations that use both the Project A and open outcry markets. The CBT has stated that it intends to develop systems and programs that integrate surveillance of its Project A and open outcry markets. The Exchange should be diligent in pursuing this process.

From January, 1997 through December, 1998, the Exchange initiated 21 investigations into all types of possible abuses on Project A, nine of which had been closed as of December, 1998. One of those nine was closed within the four-month objective set forth in Commission Regulation 8.06, and another three were closed within four to six months. Thus, only 44 percent of those Project A investigations opened and closed during 1997-98 were closed within six months. If CBT cannot complete its Project A investigations within the objective set by Regulation 8.06, it should provide the reasons why such investigations require more than four months to complete. Based on examination of its computerized surveillance reports, CBT initiated four dual trading-related investigations during that period, one of which resulted in referral to a disciplinary committee. As of December 1998 that case was still pending. In other Project A-related disciplinary actions, the Exchange levied \$20,000 in fines, imposed one ten-day suspension, and issued four reprimands.

(d) Commitment of Resources—The Commission finds that CBT meets the requirements of section 5a(b)(1)(E) by committing sufficient resources for its trade monitoring system relating to Project A, including automating elements of such trade surveillance system, to be effective in detecting and deterring violations. CBT also maintains an adequate staff to investigate and to prosecute disciplinary actions.

Accordingly, on this date, the Commission hereby grants CBT's Petition for exemption from the dual trading prohibition for trading on Project A of its electronically traded U.S. Treasury Bond futures contracts.

For this exemption to remain in effect, CBT must demonstrate on a continuing basis that it meets the relevant statutory and regulatory requirements. The Commission will monitor continued compliance through its rule enforcement review program and any other information it may obtain about CBT's program.

The provisions of this Order shall be effective on the date on which it is issued and shall remain in effect unless and until it is revoked in accordance with section 8e(b)(3)(B) of the Commodity Exchange Act, 7 U.S.C. 12e(b)(3)(B). If other CBT contracts electronically traded on Project A become affected contracts after the date of this Order, the Commission may expand this Order in response to an updated petition that includes those contracts.

*It is so ordered.*

Dated: February 26, 1999.

**Jean A. Webb,**

*Secretary to the Commission.*

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BILLING CODE 6351-01-M

## COMMODITY FUTURES TRADING COMMISSION

### Alternative Executive, or Block Trading, Procedures for the Futures Industry

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Advisory.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") will consider contract market proposals to adopt alternative executive execution, or block trading, procedures for large size or other types of orders on a case-by-case basis under a flexible approach to the requirements of the Commodity Exchange Act ("Act") and the Commission's regulations. The Commission continues to be open to further comments on the various issues surrounding potential alternative execution procedures from industry participants.

**EFFECTIVE DATE:** This Advisory is effective upon issuance.

**FOR FURTHER INFORMATION CONTACT:** Rebecca L. Creed, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418-5430.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

After careful consideration of public comments and interviews with interested securities and futures industry participants, the Commission has decided to evaluate contract market proposals to adopt alternative execution, or block trading, procedures for large size or other types of orders on a case-by-case basis. As discussed below, the Commission believes that the appropriate terms and conditions governing such execution procedures are best addressed in the context of specific proposals. The Commission stands ready to consider any rule proposal submitted by a contract market that expressly allows such transactions to be executed using any combination of competitive and noncompetitive execution procedures. The Commission plans to take a flexible approach in considering such proposals.