Henry Hub physically-delivered natural gas futures contract for the same specified calendar month. The size of the SCL contract is 2,500 million British thermal units (''mmBtu''), and the unit of trading is any multiple of 2,500 mmBtu. The SCL contract is listed for up to 120 calendar months commencing with the next calendar month.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its SCL contract, the total number of trades was 8,102 in the second quarter of 2009, resulting in a daily average of 126.6 trades. During the same period, the SCL contract had a total trading volume of 612,452 contracts and an average daily trading volume of 9,569 contracts. Moreover, the open interest as of June 30, 2009, was 417,121 contracts.

It appears that the SCL contract may satisfy the material liquidity, price linkage, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the SCL contract averaged more than 9,000 contracts on a daily basis, with more than 100 separate transactions each day. In addition, the open interest in the subject contract was substantial. In regard to price linkage, the final settlement of the SCL contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas contract, where the NYMEX is registered with the Commission as a designated contract market (''DCM''). In terms of material price reference, the ICE maintains exclusive rights over IPI's bidweek price indices. As a result, no other exchange can offer such a basis contract based on IPI's Socal bidweek index. While other third-party price providers produce natural gas price indices for a variety of trading centers, those indices may not be the same in value or quality as IPI's price indices; each company's bidweek indices are based on transactions that are consummated during the last five days of the month prior to delivery and are voluntarily submitted by traders. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''West Gas End of Day'' and ''OTC Gas End of Day'' with access to all price data or just 12, 24, 36, or 48 months of historical data.

III. Request for Comment

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: Price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the Part 36 rules,[5] the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the ICE's SCL contract performs a significant price discovery function. Commenters' attention is directed particularly to Appendix A of the Commission's Part 36 rules for a detailed discussion of the factors relevant to a SPDC determination. The Commission notes that comments which analyze the contract in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity are they knowledgeable about one or several of the subject contracts.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[6] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

B. Cost-Benefit Analysis

Section 15(a) of the CEA[7] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of such an order or to determine whether the benefits of such an order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly-mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

Issued in Washington, DC, on October 14, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–25192 Filed 10–19–09; 8:45 am]

BILLING CODE 6351–01–P

[5] 17 CFR Part 36, Appendix A.

[6] 44 U.S.C. 3507(d).

[7] 7 U.S.C. 19(a).

COMMODITY FUTURES TRADING COMMISSION

Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether the (1) Phys, BS, LD1 (US/MM), AB–NIT Contract, et al., Offered for Trading on the Natural Gas Exchange, Inc., Perform Significant Price Discovery Functions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of action and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the (1) Phys,[1] BS,[2]

[1] The acronym ''Phys'' indicates physical delivery of natural gas.

[2] The acronym ''BS'' indicates that the contract is a cash-settled basis swap.

LD1 [3] (US/MM), AB–NIT [4] (''Alberta Basis''); (2) Phys, BS, LD1 (US/MM), Union-Dawn [5] (''Union-Dawn Basis''); (3) Phys, FP,[6] (CA/GJ),[7] AB–NIT (''Alberta Fixed-Price''); (4) Phys, FP, (US/MM), Union-Dawn (''Union-Dawn Fixed-Price''); and (5) Phys, ID,[8] 7a [9] (CA/GJ), AB–NIT (''Alberta Index'') contracts, offered for trading on the Natural Gas Exchange, Inc. (''NGX''), an exempt commercial market (''ECM'') under Sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), perform significant price discovery functions. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

DATES: Comments must be received on or before November 4, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

• *Follow the instructions for submitting comments. Federal eRulemaking Portal: http://www.regulations.gov.*

• *E-mail: secretary@cftc.gov.* Include Phys, BS, LD1 (US/MM), AB–NIT (''Alberta Basis'') Contract; Phys, BS, LD1 (US/MM), Union-Dawn (''Union-Dawn Basis'') Contract; Phys, FP, (CA/GJ), AB–NIT (''Alberta Fixed-Price'') Contract; Phys, FP, (US/MM), Union-Dawn (''Union-Dawn Fixed-Price'') Contract; and/or Phys, ID, 7a (CA/GJ), AB–NIT (''Alberta Index'') Contract in the subject line of the message, depending on the subject contract(s) to which the comments apply.

• *Fax:* (202) 418–5521

• *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581

• *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov*; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'') [10] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not an SPDC, the Commission will evaluate the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs, Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) That averaged five trades per day or more over the most recent calendar quarter; and (ii) (A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily price of another agreement.

II. Determination of an SPDC

A. The SPDC Determination Process

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.[11] After prompt consideration of all relevant information,[12] the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA [13] and the applicable provisions of Part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the

[3] The acronym ''LD1'' indicates the final settlement price of the New York Mercantile Exchange (NYMEX) physically-delivered Henry Hub Natural Gas futures contract for the corresponding contract month, which is expressed in US dollars and cents per million British thermal units (mmBtu).

[4] The acronym ''AB–NIT'' refers to the Alberta, Canada, and Nova Inventory Transfer hub.

[5] ''Union-Dawn'' refers to the Union Gas, Ltd.'s, Dawn hub, which is located in Canada across the U.S. border from Detroit, Michigan.

[6] The acronym ''FP'' refers to fixed-price contracts.

[7] The abbreviation CA/GJ refers the Canadian dollars per gigajoule, which is a unit of measure for energy. One GJ is equal to 0.9478 mmBtu.

[8] The acronym ''ID'' refers to index contracts.

[9] The term ''7a'' refers to a price index that is computed as a volume-weighted average of transactions that occur on the NGX trading platform during a particular calendar month. Such transactions specify the physical delivery of natural gas at the AB–NIT hub in the following calendar month.

[10] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

[11] The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

[12] Where appropriate, the Commission may choose to interview market participants regarding their impressions of a particular contract. Further, while they may not provide direct evidentiary support with respect to a particular contract, the Commission may rely for background and context on resources such as its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* (''ECM Study''). *http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403–07_ecmreport.pdf.*

[13] 7 U.S.C. 2(h)(7)(C).

ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

B. Phys, BS, LD1 (US/MM), AB–NIT Contract

The Alberta Basis contract is a monthly contract that calls for physical delivery of natural gas based on the final settlement price for NYMEX's Henry Hub physically-delivered natural gas futures contract for the specified calendar month, plus or minus the price differential (basis) between the Alberta delivery point [14] and the Henry Hub. There is no standard size for the Alberta Basis contract, although a minimum volume of 100 mmBtu is required in increments of 100 units per day. The Alberta Basis contract is listed for 60 consecutive calendar months.

Based upon a required quarterly notification filed on August 25, 2009 (mandatory under Rule 36.3(c)(2)), the NGX reported that, with respect to its Alberta Basis contract, the average number of trades each day for the nearby contract month was 23.2 in the second quarter of 2009. During the same period, the Alberta Basis nearby contract had an average daily trading volume of 5,869,800 million British thermal units (mmBtu).[15] Moreover, the net open interest as of June 30, 2009, for the nearby contract month was 150,213,600 mmBtu. For delivery two months out, the open interest was 10,112,200 mmBtu.

It appears that the Alberta Basis contract may satisfy the material liquidity, price linkage, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the Alberta Basis contract was nearly 6,000,000 mmBtu on a daily basis, with more than 20 separate transactions each day. In addition, the open interest in the subject contract was substantial. In regard to price linkage, the final settlement of the Alberta Basis contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas futures contract, where the NYMEX is registered with the Commission as a designated contract market (''DCM'').

With respect to material price reference, the NGX forged an alliance with the IntercontinentalExchange, Inc., (ICE) to use the ICE's matching engine to complete transactions in physical gas contracts traded on NGX. In return, the NGX agreed to provide the clearing services for such transactions. As part of the agreement, NGX provides the ICE with transaction data, which are then made available to market participants on a paid basis. The ICE offers the NGX data in several packages, which vary in terms of the amount of available historical data. For example, the ICE offers the ''OTC Gas End of Day'' data packages with access to all historical data, or the option of accessing 12, 24, 36, and 48 months of past data only.

C. Phys, BS, LD1 (US/MM), Union-Dawn Contract

The Union-Dawn Basis contract is a monthly contract that calls for physical delivery of natural gas based on the final settlement price for NYMEX's Henry Hub physically-delivered natural gas futures contract for the specified calendar month, plus or minus the price differential (basis) between the Dawn delivery point [16] and the Henry Hub. There is no standard size for the Union-Dawn Basis contract, although a minimum volume of 100 mmBtu is required in increments of 100 units per day. The Union-Dawn Basis contract is listed for 60 consecutive calendar months.

Based upon a required quarterly notification filed on August 25, 2009 (mandatory under Rule 36.3(c)(2)), the NGX reported that, with respect to its Union-Dawn Basis contract, the average number of trades each day for the nearby contract month was 8.3 in the second quarter of 2009. During the same period, the Union-Dawn Basis nearby contract had an average daily trading volume of 1,332,400 mmBtu. Moreover, the net open interest as of June 30, 2009, for the nearby contract month was 28,203,800 mmBtu. For delivery two months out, the open interest was 12,908,400 mmBtu.

It appears that the Union-Dawn Basis contract may satisfy the material liquidity, price linkage, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the Union-Dawn Basis contract was more than 1,000,000 mmBtu on a daily basis, with more than eight separate transactions each day. In addition, the open interest in the subject contract was substantial. In regard to price linkage, the final settlement of the Union-Dawn Basis contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas futures contract, where the NYMEX is registered with the Commission as a designated contract market (''DCM'').

With respect to material price reference, the NGX forged an alliance with the IntercontinentalExchange, Inc., (ICE) to use the ICE's matching engine to complete transactions in physical gas contracts traded on NGX. In return, the NGX agreed to provide the clearing services for such transactions. As part of the agreement, NGX provides the ICE with transaction data, which are then made available to market participants on a paid basis. The ICE offers the NGX data in several packages, which vary in terms of the amount of available historical data. For example, the ICE offers the ''OTC Gas End of Day'' data packages with access to all historical data, or the option of accessing 12, 24, 36, and 48 months of past data only.

D. Phys, FP, (CA/GJ), AB–NIT Contract

The Alberta Fixed-Price contract calls for physical delivery of natural gas over a number of different time periods. This contract allows delivery of natural gas during the following day, Friday plus two or three days, Saturday plus three or four days, Sunday plus two days, the remainder of the month, throughout the nearby calendar month, and during a specific future calendar month. Each delivery period is considered to be a separate contract, and market participants value each delivery period separately. However, overlapping delivery days are considered fungible, and, thus, may be offset by traders. There is no standard size for the Alberta Fixed-Priced contract, although a minimum volume of 94.78 mmBtu is required in increments of 100 units per day. The NGX lists the Alberta Fixed-Price contract for 60 calendar months.

Based upon a required quarterly notification filed on August 25, 2009 (mandatory under Rule 36.3(c)(2)), the NGX reported that, with respect to its Alberta Fixed-Price contract, the average number of trades daily for each delivery period was greater than five in the second quarter of 2009. In this regard, the average number of trades each day was 122.1, 36.0, 7.0, 30.1, 7.4, 68.6, and 12.8 trades for the following delivery periods—following day, Friday plus two days, Friday plus three days, Saturday

[14] NOVA Gas Transmission, Ltd., owns the natural gas transmission infrastructure known as the Alberta System. The Alberta System is a network comprising 14,100 miles of pipeline that gathers natural gas for use both in Alberta and for delivery to provincial border points for export to North American markets. The Alberta System is one of the largest natural gas transmission systems in North America and gathers 66 percent of natural gas produced in Western Canada.

[15] For comparative purposes, the size of the NYMEX's physically-delivered Henry Hub natural gas futures contract is 10,000 mmBtu.

[16] Union Gas, Ltd., is a major Canadian natural gas storage, transmission, and distribution company based in Ontario, Canada. Union Gas offers premium storage and transportation services to customers at the Dawn hub, which the largest underground storage facility in Canada and one of the largest in North America. The Dawn hub offers customers an important link for natural gas moving from Western Canadian and U.S. supply basins to markets in central Canada and the northeast United States.

plus three days, Saturday plus four days, Sunday plus two days, remainder of the month, nearby calendar month, and any single future calendar month, respectively. During the same period, the Alberta Fixed-Price contract had an average daily trading volume of 1,209,505 mmBtu; 821,565 mmBtu; 223,874 mmBtu; 754,175 mmBtu; 672,568 mmBtu; 6,634,030 mmBtu; and 1,233,958 mmBtu for the following delivery periods—next day, Friday plus two days, Friday plus three days, Saturday plus three days, Saturday plus four days, Sunday plus two days, remainder of the month, nearby calendar month, and any single future calendar month, respectively. Moreover, the net open interest as of June 30, 2009, was 96,003,450 mmBtu for next-month delivery. For delivery two months out, the open interest was 54,456,997 mmBtu.[17]

It appears that the Alberta Fixed-Price contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material liquidity, trading in the nearby month of the Alberta Fixed-Price contract was close to 7,000,000 mmBtu on a daily basis, with nearly 70 separate transactions each day. In addition, the open interest in the subject contract was substantial.

With respect to material price reference, the NGX forged an alliance with the IntercontinentalExchange, Inc., (ICE) to use the ICE's matching engine to complete transactions in physical gas contracts traded on NGX. In return, the NGX agreed to provide the clearing services for such transactions. As part of the agreement, NGX provides the ICE with transaction data, which are then made available to market participants on a paid basis. The ICE offers the NGX data in several packages, which vary in terms of the amount of available historical data. For example, the ICE offers the ''OTC Gas End of Day'' data packages with access to all historical data, or the option of accessing 12, 24, 36, and 48 months of past data only.

E. Phys, FP, (US/MM), Union-Dawn Contract

The Union-Dawn Fixed-Price contract calls for physical delivery of natural gas over two different time periods: the following day and Saturday plus three days. Each delivery period is considered to be a separate contract, and the market participants value each delivery period separately. However, overlapping delivery days are considered fungible, and, thus, may be offset by traders. There is no standard size for the Union-Dawn Fixed-Priced contract, although a minimum volume of 100 mmBtu required in increments of 100 units per day. The NGX lists the Union-Dawn Fixed-Price contract for 60 calendar months.

Based upon a required quarterly notification filed on August 25, 2009 (mandatory under Rule 36.3(c)(2)), the NGX reported that, with respect to its Union-Dawn Fixed-Price contract, the average number of trades each day was 114.1 trades and 23.9 trades for next-day delivery and delivery Saturday plus the next three days, respectively. During the same period, the Union-Dawn Fixed-Price contract had an average daily trading volume of 812,800 mmBtu and 458,000 mmBtu for the delivery periods next day and Saturday plus three days, respectively. Moreover, the net open interest as of June 30, 2009, was 2,241,600 mmBtu for next-day delivery.

It appears that the Union-Dawn Fixed-Price contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material liquidity, trading activity in the next-day Union-Dawn Fixed-Price contract was over 800,000 mmBtu on a daily basis, with over 100 separate transactions each day. In addition, the open interest in the subject contract was substantial.

With respect to material price reference, the NGX forged an alliance with the IntercontinentalExchange, Inc., (ICE) to use the ICE's matching engine to complete transactions in physical gas contracts traded on NGX. In return, the NGX agreed to provide the clearing services for such transactions. As part of the agreement, NGX provides the ICE with transaction data, which are then made available to market participants on a paid basis. The ICE offers the NGX data in several packages, which vary in terms of the amount of available historical data. For example, the ICE offers the ''OTC Gas End of Day'' data packages with access to all historical data, or the option of accessing 12, 24, 36, and 48 months of past data only.

F. Phys, ID, 7a (CA/GJ), AB–NIT Contract

The Alberta Index contract calls for physical delivery of natural gas during the specified calendar month. When trading this contract, market participants price the difference between the anticipated value of natural gas at the time of delivery and the average of actual trades on the NGX system. The average of transactions on the NGX system is reported as a volume-weighted average price index in the first publication of the delivery month of Canadian Enerdata, Ltd.'s *Canadian Gas Price Reporter.* At the time of delivery, the negotiated price premium or discount is added or subtracted to the published index price. There is no standard size for the Alberta Index contract, although a minimum volume of 94.78 mmBtu is required in increments of 100 units per day. The NGX lists the Alberta Index contract for 60 calendar months.

Based upon a required quarterly notification filed on August 25, 2009 (mandatory under Rule 36.3(c)(2)), the NGX reported that, with respect to its Alberta Index contract, the average number of trades each day was 10.9. During the same period, the Alberta Index contract had an average daily trading volume of 2,438,627 mmBtu. Moreover, the net open interest as of June 30, 2009, was 6,287,794 mmBtu for delivery in the following month.

It appears that the Alberta Index contract may satisfy the material liquidity and material price reference factors for SPDC determination. With respect to material liquidity, trading in the nearby month of the Alberta Index contract was over 2,000,000 mmBtu on a daily basis, with over 10 separate transactions each day. In addition, the open interest in the subject contract was substantial.

With respect to material price reference, the NGX forged an alliance with the IntercontinentalExchange, Inc., (ICE) to use the ICE's matching engine to complete transactions in physical gas contracts traded on NGX. In return, the NGX agreed to provide the clearing services for such transactions. As part of the agreement, NGX provides the ICE with transaction data, which are then made available to market participants on a paid basis. The ICE offers the NGX data in several packages, which vary in terms of the amount of available historical data. For example, the ICE offers the ''OTC Gas End of Day'' data packages with access to all historical data, or the option of accessing 12, 24, 36, and 48 months of past data only.

III. Request for Comment

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the Part 36 rules,[18] the Commission, in making

[17] The open interest for other delivery periods was significantly smaller than for the nearby and second-nearby contracts.

[18] 17 CFR Part 36, Appendix A.

SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the subject contracts perform significant price discovery functions. Commenters' attention is directed particularly to Appendix A of the Commission's Part 36 rules for a detailed discussion of the factors relevant to a SPDC determination. The Commission notes that comments which analyze the contracts in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity are they knowledgeable about one or several of the subject contracts. Moreover, because five contracts are included in this notice, it is important that commenters identify to which contract(s) their comments apply.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [19] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

B. Cost-Benefit Analysis

Section 15(a) of the CEA [20] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of such an order or to determine whether the benefits of such an order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly-mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

Issued in Washington, DC, on October 14, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–25183 Filed 10–19–09; 8:45 am]

BILLING CODE 6351–01–P

[19] 44 U.S.C. 3507(d).

[20] 7 U.S.C.19(a).

COMMODITY FUTURES TRADING COMMISSION

Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether the Fuel Oil-180 Singapore Swap Contract, Offered for Trading on the IntercontinentalExchange, Inc., Performs a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of action and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the Fuel Oil—180 Singapore Swap (''SZS'') contract, offered for trading on the IntercontinentalExchange, Inc. (''ICE''), an exempt commercial market (''ECM'') under Sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), perform a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

DATES: Comments must be received on or before November 4, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Follow the instructions for submitting comments. Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: secretary@cftc.gov.* Include Fuel Oil—180 Singapore Swap (SZS) Contract in the subject line of the message.
- *Fax:* (202) 418–5521
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov*; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'') [1] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with

[1] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.