

futures association pursuant to section 17(j) of the Act.

(2) If the presentation of such simulated or hypothetical performance is other than oral, the prescribed statement must be prominently disclosed.

(c) The provisions of this section shall apply:

(1) To any publication, distribution or broadcast of any report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice, including the texts of standardized oral presentations and of radio, television, seminar or similar mass media presentations, and

(2) Regardless of whether the commodity pool operator or commodity trading advisor is exempt from registration under the Act.

(Approved by the Office of Management and Budget under control number 3038-0005)

[46 FR 26013, May 8, 1981, as amended at 46 FR 63035, Dec. 30, 1981; 60 FR 38192, July 25, 1995]

PART 5—DESIGNATION OF AND CONTINUING COMPLIANCE BY CONTRACT MARKETS

Sec.

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APPENDIX A TO PART 5—GUIDELINE NO. 1; INTERPRETIVE STATEMENT REGARDING ECONOMIC AND PUBLIC INTEREST REQUIREMENTS FOR CONTRACT MARKET DESIGNATION

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APPENDIX E TO PART 5—INFORMATION THAT A FOREIGN BOARD OF TRADE SHOULD SUBMIT WHEN SEEKING NO-ACTION RELIEF TO OFFER AND SELL, TO PERSONS LOCATED IN THE UNITED STATES, A FUTURES CONTRACT ON A FOREIGN SECURITIES INDEX TRADED ON THAT FOREIGN BOARD OF TRADE

AUTHORITY: 7 U.S.C. 6(c), 6c, 7, 7a, 8 and 12a.

§ 5.1 Fast-track designation review.

(a) *Cash-settled contracts.* Boards of trade seeking designation as a contract market under sections 4c, 5, 5a, and 6 of

the Act, and regulations thereunder, shall be deemed to be designated as a contract market under section 6 of the Act ten days after receipt by the Commission of the application for designation, unless notified otherwise within that period, if:

(1) The board of trade labels the submission as being submitted pursuant to Commission rule 5.1—Fast Track Ten-Day Review;

(2)(i) The application for designation is for a futures contract providing for cash settlement or for delivery of a foreign currency for which there is no legal impediment to delivery and for which there exists a liquid cash market; or

(ii) For an option contract that is itself cash-settled, is for delivery of a foreign currency which meets the requirements of paragraph (a)(2)(i) of this section or is to be exercised into a futures contract which has already been designated as a contract market;

(3) The application for designation is for a commodity other than those enumerated in section 1a(3) of the Act or subject to the procedures of section 2(a)(1)(B) of the Act;

(4) The board of trade currently is designated as a contract market for at least one contract which is not dormant within the meaning of this part;

(5) The submission complies with the requirements of Appendix A of this part—Guideline No. 1 and §1.61 of this chapter;

(6) The board of trade does not amend the terms or conditions of the proposed contract or supplement the application for designation, except as requested by the Commission or for correction of typographical errors, renumbering or other such nonsubstantive revisions, during that period; and

(7) The board of trade has not instructed the Commission in writing during the review period to review the application for designation under the usual procedures under section 6 of the Act.

(b) *Contracts for physical delivery.* Boards of trade seeking designation as a contract market under sections 4c, 5, 5a, and 6 of the Act, and regulations thereunder, shall be deemed to be designated as a contract market under section 6 of the Act forty-five days

after receipt by the Commission of the application for designation, unless notified otherwise within that period, if:

(1) The board of trade labels the submission as being submitted pursuant to Commission rule 5.1—Fast Track Forty-Five Day Review;

(2) The application for designation is for a commodity other than those subject to the procedures of section 2(a)(1)(B) of the Act;

(3) The board of trade currently is designated as a contract market for at least one contract which is not dormant within the meaning of this part;

(4) The submission complies with the requirements of Appendix A of this part—Guideline No. 1 and §1.61 of this chapter;

(5) The board of trade does not amend the terms or conditions of the proposed contract or supplement the application for designation, except as requested by the Commission or for correction of typographical errors, renumbering or other such nonsubstantive revisions, during that period; and

(6) The board of trade has not instructed the Commission in writing during the forty-five day review period to review the application for designation under the usual procedures under section 6 of the Act.

(c) *Notification of extension of time.* The Commission, within ten days after receipt of a submission filed under paragraph (a) of this section, or forty-five days after receipt of a submission filed under paragraph (b) of this section, may notify the board of trade making the submission that the review period has been extended for a period of thirty days where the designation application raises novel or complex issues which require additional time for review. This notification will briefly specify the nature of the specific issues for which additional time for review is required. Upon such notification, the period for fast-track review of paragraphs (a) and (b) of this section shall be extended for a period of thirty days.

(d) *Notification of termination of fast-track procedures.* During the fast-track review period provided under paragraphs (a) or (b) of this section, or of the thirty-day extension when the period has been enlarged under paragraph (c) of this section, the Commission

shall notify the board of trade that the Commission is terminating fast-track review procedures and will review the proposed rule under the usual procedures of section 6 of the Act, if it appears that the proposed contract may violate a specific provision of the Act, regulation, or form or content requirement of Appendix A of this part. This termination notification will briefly specify the nature of the issues raised and the specific provision of the Act, regulation, or form or content requirement of Appendix A of this part that the proposed contract appears to violate. Within ten days of receipt of this termination notification, the board of trade may request that the Commission render a decision whether to approve the designation or to institute a proceeding to disapprove the proposed application for designation under the procedures specified in section 6 of the Act by notifying the Commission that the exchange views its application as complete and final as submitted.

(e) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Economic Analysis or to the Director's delegatee, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to request under paragraphs (a)(6) and (b)(5) of this section that the contract market amend the proposed contract or supplement the application, to notify a board of trade under paragraph (c) of this section that the time for review of a proposed contract term submitted for review under paragraphs (a) or (b) of this section has been extended, and to notify the contract market under paragraph (d) of this section that the fast-track procedures of this section are being terminated.

(2) The Director of the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated in paragraph (e)(1) of this section.

(3) Nothing in the paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (e)(1) of this section.

[62 FR 10440, Mar. 7, 1997]