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§ 40.3(d) or § 40.5(d) that the Commission is not approving, or is unable to approve, the proposed product, rule or rule amendment.

(2) *Emergency rules.* The Commission hereby delegates authority to the Directors of Division of Market Oversight and Division of Clearing and Intermediary Oversight or the delegatees of the Directors, authority to receive notification and the required certification of emergency rules under § 40.6(a)(2).

(b) *Approval authority.* The Commission hereby delegates, until the Commission orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight and separately to the Director of the Division of Market Oversight, with the concurrence of the General Counsel or the General Counsel's delegatee, to be exercised by either of such Directors or by such other employee or employees of the Commission under the supervision of such Directors as may be designated from time to time by the Directors, the authority to approve, pursuant to section 5c(c)(3) of the Act and § 40.5, rules or rule amendments of a designated contract market, registered derivatives transaction execution facility or registered derivatives clearing organization that:

(1) Relate to, but do not substantially change, the quantity, quality, or other delivery specifications, procedures, or obligations for delivery, cash settlement, or exercise under an agreement, contract or transaction approved for trading by the Commission; daily settlement prices; clearing position limits; requirements or procedures for governance of a registered entity; procedures for transfer trades; trading hours; minimum price fluctuations; and maximum price limit and trading suspension provisions;

(2) Reflect routine modifications that are required or anticipated by the terms of the rule of a registered entity;

(3) [Reserved]

(4) Are in substance the same as a rule of the same or another registered entity which has been approved previously by the Commission pursuant to section 5c(c)(3) of the Act;

(5) Are consistent with a specific, stated policy or interpretation of the Commission; or

(6) Relate to the listing of additional trading months of approved contracts.

(c) The Directors may submit to the Commission for its consideration any matter that has been delegated pursuant to paragraph (a) or (b) of this section.

(d) Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated in paragraph (a) or (b) of this section to the Directors.

[66 FR 42283, Aug. 10, 2001, as amended at 67 FR 62352, Oct. 7, 2002; 67 FR 62880, Oct. 9, 2002]

§ 40.8 Availability of public information.

Any information required to be made publicly available by a registered entity under sections 5(d)(7), 5a(d)(4) and 5b(c)(2)(L) of the Act, respectively, will be treated as public information by the Commission at the time an order of designation or registration is issued by the Commission, a registered entity is deemed to be designated or registered, a rule or rule amendment of the registered entity is approved or deemed to be approved by the Commission or can first be made effective the day following its certification by the registered entity.

[67 FR 62880, Oct. 9, 2002]

APPENDIX A TO PART 40—GUIDELINE NO. 1

(a) Application for Designation of Physical Delivery Futures Contracts

A board of trade shall submit:

(1) The rules setting froth the terms and conditions of the futures contract.

(2) A description of the cash market for the commodity on which the contract is based.

(i) The description may include, in addition to or in lieu of materials prepared by the board of trade, existing studies by industry trade groups, academics, governmental bodies or other entities, reports of consultants, or other materials which provide a description of the underlying cash market.

(ii) Where the same, or a closely related commodity, is already designated as a contract market which and is not dormant, the cash market description can be confined to those aspects relevant to particular term(s) or condition(s) which differ from such existing contract.

(3) A demonstration that the terms and conditions, as a whole, will result in a deliverable supply such that the contract will not be conducive to price manipulation or distortion and that the deliverable supply reasonably can be expected to be available to short traders and salable by long traders at its market value in normal cash marketing channels.

For purposes of this demonstration, provide the following information in chart or narrative form.

CONTRACT TERMS AND CONDITIONS

Term or condition	Exchange proposal	Rule number of identical approved provision, if any[1]	Explanation as to consistency with, or reason for variance from cash market practice
1. Commodity characteristics (*e.g.,* grade, quality, weight, class, growth, issuer, origin, maturity, source, rating, etc.)			
2. Any quality differentials for nonpar deliveries, or lack thereof			
3. Delivery points/region			
4. Any locational differentials for nonpar deliveries, or lack thereof			
5. Delivery facilities (type, number, capacity, ownership)			
6. Contract size and/or trading unit			
7. Delivery pack or composition of delivery units			
8. Delivery instrument (*e.g.,* warehouse receipt, shipping certificate, bill of lading)			
9. Transportation terms (*e.g.,* FOB, CIF, prepay freight to destination)			
10. Delivery procedures			
11. Delivery months			
12. Delivery period and last trading day			
13. Inspection/certification procedures (verification of delivery eligibility, any discounts applied for age)			
14. Minimum price change (tick) equal to or less than cash market minimum price increment			
15. Daily price limit provisions (note relationship to cash market price movements)			
DELIVERABLE SUPPLIES[2]—ESTIMATE OF DELIVERABLE SUPPLIES FOR TRADING MONTH(S) WITH LOWEST SUPPLIES			
ESTIMATION METHODOLOGY			

[1] If an identical provision has been approved for a nondormant contract in the same commodity, there is no need to provide an explanation in the next column.

[2] No estimate of deliverable supply is needed if a previously designated nondormant contract is trading. Also, no justification of the spot month limit is needed if the limit is the same as that approved by the Commission for an identical contract in that commodity (relative to the quantity or value of the identical contract). Where more than one contract is based on the same underlying commodity or instrument, positions should be combined for purposes of applying speculative limits.

TERMS AND CONDITIONS RELATED TO SPECULATIVE LIMITS

Speculative limit	Standard	Level (exchange rule)
1. Spot month	No greater than one-fourth of estimated deliverable supply.	
2. Nonspot individual month or all months combined (financial and energy contract).	5,000 contract	
3. Nonspot individual month or all months combined (tangible commodity contracts).	1,000 contracts	
4. Reporting level	Equal to or less than levels specified in CFTC rule 15.03.	
5. Aggregation rule	Same as CFTC rule 150.5(g) or previously approved language.	

(4) As specifically requested, such additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the specific requirements of the Act, including the public interest standard contained in Section 5(7) of the Act, and whether the contract reasonably can be expected to be, or has been, used for hedging and/or price basing on more than an occasional basis, or any other requirement for designation under the Act or Commission rules and policies.

(b) Application for Cash Settled Futures Contracts

A board of trade shall submit:

(1) The rules setting forth the terms and conditions of the proposed futures contract.

(2) A description of the cash market for the commodity on which the contract is based.

(i) The description may include, in addition to or in lieu of materials prepared by the board of trade, existing studies by industry trade groups, academics, governmental bodies or other entities, reports of consultants, or other materials which provide a description of the underlying cash market.

(ii) Where the same, or a closely related commodity, is already designated as a contract market which is not dormant, the cash market description can be confined to those aspects relevant to particular term(s) or conditions(s) which differ from such existing contract.

(3) A demonstration that cash settlement of the contract is at a price reflecting the underlying cash market, will not be subject to manipulation or distortion, and is based on a cash price series that is reliable, acceptable, publicly available and timely.

For purposes of this demonstration, provide the following information in chart or narrative form.

CONTRACT TERMS AND CONDITIONS

Term or condition		Rule number of identical approved provision, if any[1]	Explanation as to consistency with, or reason for variance from, cash market practice
1. Commodity characteristics (*e.g.,* grade, quality, weight, class, growth, issuer, maturity, source, rating, etc.)			
2. Delivery months, noting any cyclical variations in trading activity that may affect the potential for manipulating the cash settlement price			
3. Last trading day			
4. Contract size			
5. Minimum price change (tick)			
6. Daily price limit provisions, relative to cash market price movements.			

[1] If an identical provision has been approved for a nondormant contract in the same commodity, there is not need to provide an explanation in the next column.

TERMS AND CONDITIONS RELATED TO CASH SETTLEMENT PRICE SERIES

Requirement	Rule number of identical approved provision	Explanation or justification
1. Where an independent third party calculate the cash settlement price series, evidence that the third party does not object to its use and provides safeguards against susceptibility to manipulation		
2. Where board of trade generates cash settlement rice series, specifications of calculation procedure and safeguards in cash settlement process to protect against susceptibility to manipulation (*e.g.,* if self-generated survey, polling sample representative of cash market, but with a minimum of 4 nontrading entities or 8 entities that trade for own account)		
3. Procedure for, and timeliness of, dissemination to public		
4. Evidence that price is reliable indicator of cash market values and acceptable for hedging		

TERMS AND CONDITIONS RELATED TO SPECULATIVE LIMITS

Speculative limit	Standard	Level (exchange rule)
1. Spot month	Must be no greater than necessary to minimize the potential for manipulation or distortion of the contract's or the underlying commodity's price.	
2. Nonspot individual month or all months combined (financial and energy contracts).	5,000 contracts	
3. Nonspot individual month or all months combined (tangible commodity contracts).	1,000 contracts	
4. Reporting level	Equal to or less than levels specified in CFTC rule 15.03.	
5. Aggregation rule	Same as CFTC rule 150.5(g) or previously approved language.	

(4) As specifically requested, such additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the specific requirements of the Act, including the public interest standard contained in Section 5(7) of the Act, and whether the contract reasonably can be expected to be, or has been, used for hedging and/or price basing on more than an occasional basis, or any other requirement for designation under the Act or Commission rules and policies.

(c) Application for Option Contracts

A board of trade shall submit:

(1) The rules setting forth the terms and conditions of the proposed option contract.

(2)(i) For options on futures contracts, the terms and conditions of the proposed or existing underlying futures contract.

(2)(ii) For options on physical commodities:

(A) A description of the cash market for the commodity on which the contract is based.

(1) The description may include, in addition to or in lieu of material prepared by the board of trade: existing studies by industry trade groups, academics, governmental bodies or other entities; promotional or marketing materials prepared by or for the board of trade; reports of consultants; or other materials which provide a description of the underlying cash market.

(2) Where the same, or a closely related commodity, is already designated and is not dormant, the cash market description can be confined to those aspects relevant to particular term(s) or condition(s) which differ from such existing contract.

(B) Depending on the method of settling the option, the relevant chart for either a physical delivery or cash settled futures contract.

(3) The following completed chart.

TERMS AND CONDITIONS

Criterion	Applicable CFTC Rule (17 CFR)	Standard	Met by exchange rule number	Justification for not meeting standard, or rule number of identical approved rule
1. Speculative limits	150.5	Combined net position in futures and options on a futures-equivalent basis at the futures position levels, with inter-month spread exemptions that are consistent with those of the futures contracts or consistent with Commission Rule 150.5(e) for underlying future.		
2. Aggregation rule	150.4	Same as Rule 150.5(g) or previously approved language.		
3. Reporting level	15.00(b)(2)	50 contracts or fewer		
4. Strike prices (number listed & increments).	33.4(b)(1)	Procedures for routine listing of strikes are specified and automatic, provisions for listing discretionary strikes are specified.		
5. Option expiration & last trading day.	33.4(b)(2)	Except for options on cash-settled futures contracts, expiration is not less than one business day before the earlier of the last trading day or the first notice day of the underlying future.		
6. Minimum tick	33.4(d)	Equal to, or less than, the underlying futures tick.		
7. Daily price limit, if specified.	33.4(d)	Equal to, or greater than, the underlying futures price limit.		

(4) As specifically requested, such additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the specific requirements of the Act, including the public interest standard contained in Section 5(7) of the Act, or any other requirement for designation under the Act or Commission rules and policies.

[64 FR 29221, June 1, 1999. Redesignated at 66 FR 42287, Aug. 10, 2001]

APPENDIX B TO PART 40—SCHEDULE OF FEES

(a) *Applications for product approval.* Each application for product approval under §40.3 must be accompanied by a check or money order made payable to the Commodity Futures Trading Commission in an amount to be determined annually by the Commission and published in the FEDERAL REGISTER.