

(d) *Notice of non-approval.* The Commission at any time during its review under this section may notify the submitting entity that it will not, or is unable to, approve the proposed rule or rule amendment. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or regulations, including the form or content requirements of this section, that the proposed rule would violate, appears to violate or the violation of which cannot be ascertained from the submission.

(e) *Effect of non-approval.* (1) Notification to a registered entity under paragraph (d) of this section of the Commission's refusal to approve a proposed rule or rule amendment of a registered entity does not prejudice the entity from subsequently submitting a revised version of the proposed rule or rule amendment for Commission approval or from submitting the rule or rule amendment as initially proposed pursuant to a supplemented submission.

(2) Notification to a registered entity under paragraph (d) of this section of the Commission's refusal to approve a proposed rule or rule amendment of a registered entity shall be presumptive evidence that the entity may not truthfully certify that the same, or substantially the same, proposed rule or rule amendment does not violate the Act or regulations thereunder.

(f) *Expedited approval.* Notwithstanding the provisions of paragraph (b) of this section, changes to terms and conditions of a product that are consistent with the Act and Commission regulations and with standards approved or established by the Commission in a written notification to the registered entity of the applicability of this paragraph (f) shall be deemed approved by the Commission at such time and under such conditions as the Commission shall specify in the notice, provided, however, that the Commission may, at any time, alter or revoke the applicability of such a notice to any particular product.

[66 FR 42283, Aug. 10, 2001, as amended at 67 FR 62879, Oct. 9, 2002; 69 FR 67505, Nov. 18, 2004; 71 FR 1969, Jan. 12, 2006]

§ 40.6 Self-certification of rules by designated contract markets and registered derivatives clearing organizations.

(a) *Required certification.* A designated contract market or a registered derivatives clearing organization may implement any new rule or rule amendment (other than a rule or rule amendment approved or deemed approved by the Commission under § 40.5) if the following conditions have been met:

(1) The rule or rule amendment is not a rule or rule amendment of a designated contract market that materially changes a term or condition of a contract for future delivery of an agricultural commodity enumerated in section 1a(4) of the Act or an option on such a contract or commodity in a delivery month having open interest;

(2) The designated contract market or registered derivatives clearing organization has filed a submission electronically for the rule or rule amendment with the Secretary of the Commission and at the regional office having local jurisdiction over the submitting registered entity in a format specified by the Secretary of the Commission, and the Commission has received the submission at its headquarters by close of business on the business day preceding implementation of the rule; *provided, however*, rules or rule amendments implemented under procedures of the governing board to respond to an emergency as defined in § 40.1, shall, if practicable, be filed with the Commission prior to the implementation or, if not practicable, be filed with the Commission at the earliest possible time after implementation, but in no event more than 24 hours after implementation; and

(3) The rule submission includes:

(i) A copy of the submission cover sheet in accordance with the instructions in appendix D to this part (in the case of a rule or rule amendment that responds to an emergency, "Emergency Rule Certification" should be noted in the Description section of the submission coversheet);

(ii) The text of the rule (in the case of a rule amendment, deletions and additions must be indicated);

(iii) The date of implementation;

(iv) A brief explanation of any substantive opposing views expressed to the registered entity by governing board or committee members, members of the entity or market participants, that were not incorporated into the rule; and

(v) A certification by the registered entity that the rule complies with the Act and regulations thereunder.

(4) The registered entity shall provide, if requested by Commission staff, additional evidence, information or data that may be beneficial to the Commission in conducting a due diligence assessment of the certification filing and the entity's compliance with any of the requirements of the Act or Commission regulations or policies thereunder.

(b) *Stay*. The Commission may stay the effectiveness of a rule implemented pursuant to paragraph (a) of this section during the pendency of Commission proceedings for filing a false certification or to alter or amend the rule pursuant to section 8a(7) of the Act. The decision to stay the effectiveness of a rule in such circumstances shall not be delegable to any employee of the Commission.

(c) *Notification of rule amendments*. Notwithstanding the rule certification requirement of Section 5c(c)(1) of the Act, and paragraphs (a)(1), (a)(2) and (a)(3) of this section, a designated contract market or a registered derivatives clearing organization may place the following rules or rule amendments into effect without certification to the Commission if the following conditions are met:

(1) The designated contract market or registered derivatives clearing organization provides to the Commission at least weekly a summary notice of all rule changes made effective pursuant to this paragraph during the preceding week. Such notice must be labeled "Weekly Notification of Rule Changes" and need not be filed for weeks during which no such actions have been taken. One copy of each such submission shall be furnished electronically in a format specified by the Secretary of the Commission; and

(2) The rule governs:

(i) *Nonmaterial revisions*. Corrections of typographical errors, renumbering,

periodic routine updates to identifying information about approved entities and other such nonsubstantive revisions of a product's terms and conditions that have no effect on the economic characteristics of the product;

(ii) *Delivery standards set by third parties*. Changes to grades or standards of commodities deliverable on a product that are established by an independent third party and that are incorporated by reference as product terms, provided that the grade or standard is not established, selected or calculated solely for use in connection with futures or option trading and such changes do not affect deliverable supplies or the pricing basis for the product;

(iii) *Index products*. Routine changes in the composition, computation, or method of selection of component entities of an index (other than a stock index) referenced and defined in the product's terms, that do not affect the pricing basis of the index, which are made by an independent third party whose business relates to the collection or dissemination of price information and which was not formed solely for the purpose of compiling an index for use in connection with a futures or option product;

(iv) *Option contract terms*. Changes to option contract rules relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis, or

(v) *Fees*. Fees or fee changes that are \$1.00 or more per contract and are established by an independent third party or are unrelated to delivery, trading, clearing or dispute resolution.

(vi) *Survey lists*. Changes to lists of banks, brokers, dealers, or other entities that provide price or cash market information to an independent third party and that are incorporated by reference as product terms.

(3) *Notification of rule amendments not required*. Notwithstanding the rule certification requirements of section 5c(c)(1) of the Act and of paragraphs (a)(2) and (a)(3) of this section, designated contract markets and registered derivatives clearing organizations may place the following rules or rule amendments into effect without

certification or notice to the Commission if the following conditions are met:

(i) The designated contract market or registered derivatives clearing organization maintains documentation regarding all changes to rules; and

(ii) The rule governs:

(A) *Transfer of membership or ownership.* Procedures and forms for the purchase, sale or transfer of membership or ownership, but not including qualifications for membership or ownership, any right or obligation of membership or ownership or dues or assessments;

(B) *Administrative procedures.* The organization and administrative procedures of a contract market or a derivatives clearing organization's governing bodies such as a Board of Directors, Officers and Committees, but not voting requirements, Board of Directors or Committee composition requirements or procedures, use or disclosure of material non-public information gained through the performance of official duties, or requirements relating to conflicts of interest;

(C) *Administration.* The routine, daily administration, direction and control of employees, requirements relating to gratuity and similar funds, but not guaranty, reserves, or similar funds; declaration of holidays, and changes to facilities housing the market, trading floor or trading area;

(D) *Standards of decorum.* Standards of decorum or attire or similar provisions relating to admission to the floor, badges, or visitors, but not the establishment of penalties for violations of such rules; and

(E) *Fees.* Fees or fee changes that are less than \$1.00 or that relate to matters such as dues, badges, telecommunication services, booth space, real time quotations, historical information, publications, software licenses or other matters that are administrative in nature.

(F) *Securities Indexes.* Routine changes to the composition, computation or method of security selection of an index that is referenced and defined in the product's rules, and which are made by an independent third party.

[66 FR 42283, Aug. 10, 2001, as amended at 67 FR 62879, Oct. 9, 2002; 69 FR 67505, Nov. 18, 2004; 71 FR 1970, Jan. 12, 2006]

§ 40.7 Delegations.

(a) *Procedural matters*—(1) *Review of products or rules.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight and separately to the Director of the Division of Market Oversight or to the Director's delegatee with the concurrence of the General Counsel or the General Counsel's delegatee, authority to request under § 40.3(b)(2) or § 40.5(b)(2) that the entity requesting approval amend the proposed product, rule or rule amendment or supplement the submission, to notify a submitting entity under § 40.3(c) or § 40.5(c) that the time for review has been extended, and to notify the submitting entity under § 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 delegates of the Directors, authority to receive notification and the required certification of emergency rules under § 40.6(a)(2).

(3) The Commission hereby delegates to the Director of the Division of Market Oversight or to the Director's delegate, with the concurrence of the General Counsel or the General Counsel's delegate, the authority to determine whether a rule change submitted by a DCM for a materiality determination under § 40.4(b)(9) is not material (in which case it may be reported pursuant to the provisions of § 40.6(c)), or is material, in which case he or she shall notify the DCM that the rule change must be submitted for the Commission's prior approval.

(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