

§ 40.3 Voluntary submission of new products for Commission review and approval.

(a) *Request for approval.* Pursuant to Section 5c(c) of the Act and §§ 37.7 and 38.4 of this chapter, a designated contract market or registered derivatives transaction execution facility may request that the Commission approve a new or dormant product prior to listing the product for trading, or if initially submitted under § 40.2 of this chapter, subsequent to listing the product for trading. A submission requesting approval shall:

(1) Be filed electronically with the Secretary of the Commission and at the regional office of the Commission having local jurisdiction over the submitting registered entity in a format specified by the Secretary of the Commission;

(2) Include a copy of the submission cover sheet in accordance with the instructions in appendix D to this part;

(3) Include a copy of the rules that set forth the contract's terms and conditions;

(4) Comply with the requirements of appendix A to this part—Guideline No. 1. To demonstrate compliance, the submission shall include:

(i) An explanation, if not self-evident from the rules, as to how the specific terms and conditions satisfy the acceptable practices set forth in Guideline No. 1, appendix A to part 40. This information may be provided in narrative form or by completion of the applicable chart.

(ii) For physical delivery contracts, an explanation as to how 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.

(iii) For cash settled contracts, an explanation as to how the 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.

(iv)(A) A brief description of the cash market for the commodity, instrument, index or interest that underlies the contract. The description may include materials prepared by the designated contract market or registered derivatives transaction execution facility, 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.

(B) The cash market description may, however, be confined only to those aspects relevant to particular term(s) or condition(s) that differ from an existing contract, where a contract based on the same, or a closely related, commodity is already listed for trading and is not dormant.

(5) Describe any agreements or contracts entered into with other parties that enable the designated contract market or derivatives transaction execution facility to carry out its responsibilities.

(6) Include the certifications required in § 41.22 for product approval of a commodity that is a security future or a security futures product as defined in Sections 1a(31) or 1a(32) of the Act, respectively;

(7) Identify with particularity information in the submission (except for the product's terms and conditions which are made publicly available at the time of submission) that will be subject to a request for confidential treatment and support that request for confidential treatment with reasonable justification;

(8) Include the filing fee required under appendix B to this part; and

(9) Include, if requested by Commission staff, 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, or any other requirement for designation under the Act or Commission regulations or policies thereunder.

(b) *Forty-five day review.* All products submitted for Commission approval under this paragraph shall be deemed approved by the Commission forty-five days after receipt by the Commission, or at the conclusion of such extended

period as provided under paragraph (c) of this section, unless notified otherwise within the applicable period, if:

(1) The submission complies with the requirements of paragraph (a) of this section; and

(2) The submitting entity does not amend the terms or conditions of the product or supplement the request for approval, except as requested by the Commission or for correction of typographical errors, renumbering or other such nonsubstantive revisions, during that period. Any voluntary, substantive amendment by the submitting entity will be treated as a new submission under this section.

(c) *Extension of time.* The Commission may extend the forty-five day review period in paragraph (b) of this section for:

(1) An additional forty-five days, if the product raises novel or complex issues that require additional time for review or is of major economic significance, in which case, the Commission would notify the submitting registered entity within the initial forty-five day review period and would briefly describe the nature of the specific issues for which additional time for review would be required; or

(2) Such extended period as the submitting registered entity so instructs the Commission in writing.

(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 product or instrument. 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 paragraph (a) of this section, that the product 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 submitting entity under paragraph (d) of this section of the Commission's refusal to approve a product or instrument does not prejudice the entity from subsequently submitting a revised version of the product or instrument for Commission approval or from submitting the product or instrument

as initially proposed pursuant to a supplemented submission.

(2) Notification to a submitting registered entity under paragraph (d) of this section of the Commission's refusal to approve a product shall be presumptive evidence that the entity may not truthfully certify under §40.2 that the same, or substantially the same, product does not violate the Act or regulations thereunder.

[66 FR 42283, Aug. 10, 2001, as amended at 67 FR 62879, Oct. 9, 2002; 69 FR 67505, Nov. 18, 2004; 71 FR 1968, Jan. 12, 2006; 73 FR 8605, Feb. 14, 2008]

EFFECTIVE DATE NOTE: At 74 FR 12202, Mar. 23, 2009, §40.3 was amended by removing the term "registered entity" and adding in its place the term "designated contract market or registered derivatives transaction execution facility" in paragraphs (a)(1), (c)(1), (c)(2), and (e)(2), effective Apr. 22, 2009.

§ 40.4 Amendments to terms or conditions of enumerated agricultural contracts.

(a) Notwithstanding the provisions of this part, a designated contract market must submit for Commission approval under the procedures of §40.5, prior to its implementation, any rule or dormant rule that, for a delivery month having open interest, would materially change a term or condition, as defined in §40.1(i), of a contract for future delivery in an agricultural commodity enumerated in Section 1a(4) of the Act, or of an option on such a contract or commodity.

(b) The following rules or rule amendments are not material changes and, except as provided in paragraph (b)(9) of this section, may be reported to the Commission pursuant to the provisions of §40.6(c):

(1) Changes in trading hours;

(2) For each delivery location, changes in lists of approved delivery facilities and delivery service providers, including weighmasters and inspectors, pursuant to previously set standards or criteria;

(3) Changes to terms and conditions of options on futures other than those relating to last trading day, expiration date, option strike price delistings, and speculative position limits;

(4) Reductions in the minimum price fluctuation (or "tick");