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later than 90 days subsequent to the date that the Commission commences review, or if applicable, at the conclusion of such extended period agreed to or requested by the registered entity.

§ 40.12 Staying of certification and tolling of review period pending jurisdictional determination.

(a) *Notice of novel derivative products.* (1) A registered entity certifying, submitting for approval, or otherwise filing a proposal to list, trade, or clear a novel derivative product (other than a product subject to the provisions of § 1.8 of this chapter) having elements of both a security and a contract for the sale of a commodity for future delivery (or an option on such contract or an option on a commodity) may provide notice of its proposal to the Commission and the Securities and Exchange Commission with a statement that written notice has been provided to both agencies through an appropriate means provided in each Commission's regulations.

(2) If concurrent notice is not provided pursuant to § 40.12(a)(1), the Commission shall notify the Securities and Exchange Commission of the registered entity's submission of a novel derivative product described in § 40.12(a)(1) and accompany such notice with a copy of the submission. The Commission shall determine whether a particular submission is a novel derivative product requiring notice to the Securities and Exchange Commission not later than five business days subsequent to the date that the registered entity submits the product for Commission review.

(b) *Tolling of review period.* Upon receipt of a request for a jurisdictional determination, pursuant to Section 718(a)(2) of the Dodd-Frank Act, by the Commission or the Securities and Exchange Commission, the product certification shall be stayed or the approval review period shall be tolled until a final determination order is issued.

(1) The Commission will provide the registered entity with a written notice of stay pending issuance of a final determination order by the Commission or the Securities and Exchange Commission.

(2) The stay shall be withdrawn or the approval review period shall resume upon the Commission's or the Securities and Exchange Commission's issuance of a final determination order finding that the Commission has jurisdiction over the submission.

(3) *Determination order.* A final determination, for purposes of § 40.12(b) of this part, shall be a determination order issued by the Commission or the Securities and Exchange Commission pursuant to Section 718(a)(3) of the Dodd-Frank Act.

(c) *Judicial review of determination order.* The filing of a petition by a complaining Commission, pursuant to Section 718(b) of the Dodd-Frank Act, shall operate as a stay of the agency order.

(1) The stay shall remain in effect until the date on which the United States Court of Appeals for the District of Columbia Circuit issues a final determination pursuant to Section 718(b)(4) of the Dodd-Frank Act, or until such date that there is a final disposition of an appeal of that determination.

(2) The submission review period shall resume upon issuance of a final determination, as described in § 40.12(c)(1), that the Commission has jurisdiction over the submission.

APPENDIX A 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.

(b) Checks and applications should be sent to the attention of the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. No checks or money orders may be accepted by personnel other than those in the Office of the Secretariat.

(c) Failure to submit the fee with an application for product approval will result in return of the application. Fees will not be returned after receipt.