

Commodity Futures Trading Commission

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Disclosure Framework (“Quantitative Information Disclosure”), publish such Quantitative Information Disclosure in a readily identifiable location on the derivatives clearing organization’s Web site.

If applicable, provide the URL to the specific page on the derivatives clearing organization’s Web site where its Quantitative Information Disclosure may be found:

EXHIBITS:

EXHIBIT INSTRUCTIONS:

1. The derivatives clearing organization must include a Table of Contents listing each Exhibit required by this Subpart C Election Form.

2. If the derivatives clearing organization is an Applicant, in its Form DCO, the derivatives clearing organization may summarize such information and provide a cross-reference to the Exhibit in this Subpart C Election Form that contains the required information.

The derivatives clearing organization shall provide the following Exhibits to this Subpart C Election Form:

EXHIBIT A—COMPLIANCE WITH SUBPART C

Attach, as Exhibit A, a regulatory compliance chart that separately sets forth for §§ 39.32–39.39 of the Commission’s regulations, citations to the relevant rules, policies, and procedures of the derivatives clearing organization that address each such regulation and a summary of the manner in which the derivatives clearing organization will comply with each regulation. All citations and compliance summaries shall be separated by individual regulation and shall be clearly labeled with the corresponding regulation.

EXHIBIT B—GOVERNANCE

Attach, as Exhibit B, documents that demonstrate compliance with the governance requirements set forth in § 39.32 of the Commission’s regulations.

EXHIBIT C—FINANCIAL RESOURCES

Attach, as Exhibit C, documents that demonstrate compliance with the financial resource requirements set forth in § 39.33 of the Commission’s regulations.

EXHIBIT D—SYSTEM SAFEGUARDS

Attach, as Exhibit D, documents that demonstrate compliance with the system safeguard requirements set forth in § 39.34 of the Commission’s regulations.

EXHIBIT E—DEFAULT RULES AND PROCEDURES FOR UNCOVERED LOSSES OR SHORTFALLS

Attach, as Exhibit E, documents that demonstrate compliance with the requirements

for default rules and procedures for uncovered losses or shortfalls set forth in § 39.35 of the Commission’s regulations.

EXHIBIT F—RISK MANAGEMENT

Attach, as Exhibit F, documents that demonstrate compliance with the risk management requirements set forth in § 39.36 of the Commission’s regulations.

EXHIBIT G—RECOVERY AND WIND-DOWN

Attach, as Exhibit G, documents that demonstrate compliance with the recovery and wind-down requirements set forth in § 39.39 of the Commission’s regulations.

[78 FR 72514, Dec. 2, 2013]

PART 40—PROVISIONS COMMON TO REGISTERED ENTITIES

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- 40.2 Listing products for trading by certification.
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- 40.9 [Reserved]
- 40.10 Special certification procedures for submission of rules by systemically important derivatives clearing organizations.
- 40.11 Review of event contracts based upon certain excluded commodities.
- 40.12 Staying of certification and tolling of review period pending jurisdictional determination.

APPENDIX A TO PART 40—SCHEDULE OF FEES
APPENDIXES B–C TO PART 40 [RESERVED]
APPENDIX D TO PART 40—SUBMISSION COVER SHEET AND INSTRUCTIONS

AUTHORITY: 7 U.S.C. 1a, 2, 5, 6, 7, 7a, 8 and 12, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

SOURCE: 76 FR 44790, July 27, 2011, unless otherwise noted.

§ 40.1 Definitions.

As used in this part:

- (a) *Business day* means the intraday period of time starting at the business hour of 8:15 a.m. and ending at the business hour of 4:45 p.m.; *business hour* means any hour between 8:15 a.m. and

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4:45 p.m. Business day and business hour are Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect in Washington, DC, on all days except Saturdays, Sundays, and Federal holidays in Washington, DC.

(b) *Dormant contract or dormant product* means:

(1) Any agreement, contract, transaction, instrument, swap or any such commodity futures or option contract with respect to all future or option expiries, listed on a designated contract market, a swap execution facility or cleared by a registered derivatives clearing organization, that has no open interest and in which no trading has occurred for a period of twelve complete calendar months following a certification to, or approval by, the Commission; *provided, however*, that no contract or instrument under this paragraph (b)(1) initially and originally certified to, or approved by, the Commission within the preceding 36 complete calendar months shall be considered to be dormant; or

(2) Any commodity futures or option contract, swap or other agreement, contract, transaction or instrument of a dormant designated contract market, dormant swap execution facility or a dormant derivatives clearing organization; or

(3) Any commodity futures or option contract or other agreement, contract, swap, transaction or instrument not otherwise dormant that a designated contract market, a swap execution facility or a derivatives clearing organization self-declares through certification to be dormant.

(c) *Dormant designated contract market* means any designated contract market on which no trading has occurred during the period of twelve consecutive calendar months, preceding the first day of the most recent calendar month; *provided, however*, no designated contract market shall be considered to be dormant if its initial and original Commission order of designation was issued within the preceding 36 consecutive calendar months.

(d) *Dormant derivatives clearing organization* means any derivatives clearing organization registered pursuant to Section 5b of the Act that has not ac-

cepted for clearing any agreement, contract or transaction that is required or permitted to be cleared by a derivatives clearing organization under Sections 5b(a) and 5b(b) of the Act, respectively, for a period of twelve complete calendar months; *provided, however*, no derivatives clearing organization shall be considered to be dormant if its initial and original Commission order of registration was issued within the preceding 36 complete calendar months.

(e) *Dormant swap data repository* means any registered swap data repository on which no data has resided for a period of twelve consecutive calendar months, preceding the most recent calendar month.

(f) *Dormant swap execution facility* means any swap execution facility on which no trading has occurred for a period of twelve consecutive calendar months, preceding the first day of the most recent calendar month; *provided, however*, no swap execution facility shall be considered to be dormant if its initial and original Commission order of registration was issued within the preceding 36 consecutive calendar months.

(g) *Dormant rule* means:

(1) Any registered entity rule which remains unimplemented for twelve consecutive calendar months following a certification with, or an approval by, the Commission; or

(2) Any rule or rule amendment of a dormant designated contract market, dormant swap execution facility, dormant swap data repository or dormant derivatives clearing organization.

(h) *Emergency* means any occurrence or circumstance that, in the opinion of the governing board of a registered entity, or a person or persons duly authorized to issue such an opinion on behalf of the governing board of a registered entity under circumstances and pursuant to procedures that are specified by rule, requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any agreements, contracts, swaps or transactions or the timely collection and payment of funds

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in connection with clearing and settlement by a derivatives clearing organization, including:

(1) Any manipulative or attempted manipulative activity;

(2) Any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions;

(3) Any circumstances which may materially affect the performance of agreements, contracts, swaps or transactions, including failure of the payment system or the bankruptcy or insolvency of any participant;

(4) Any action taken by any governmental body, or any other registered entity, board of trade, market or facility which may have a direct impact on trading or clearing and settlement; and

(5) Any other circumstance which may have a severe, adverse effect upon the functioning of a registered entity.

(i) *Rule* means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, advisory, terms and conditions, trading protocol, agreement or instrument corresponding thereto, including those that authorize a response or establish standards for responding to a specific emergency, and any amendment or addition thereto or repeal thereof, made or issued by a registered entity or by the governing board thereof or any committee thereof, in whatever form adopted.

(j) *Terms and conditions* means any definition of the trading unit or the specific commodity underlying a contract for the future delivery of a commodity or commodity option contract, description of the payments to be exchanged under a swap, specification of cash settlement or delivery standards and procedures, and establishment of buyers' and sellers' rights and obligations under the swap or contract. Terms and conditions include provisions relating to the following:

(1) For a contract for the purchase or sale of a commodity for future delivery or an option on such a contract or an option on a commodity (other than a swap):

(i) Quality and other standards that define the commodity or instrument underlying the contract;

(ii) Quantity standards or other provisions related to contract size;

(iii) Any applicable premiums or discounts for delivery of nonpar products;

(iv) Trading hours, trading months and the listing of contracts;

(v) The pricing basis, minimum price fluctuations, and maximum price fluctuations;

(vi) Any price limits, no cancellation ranges, trading halts, or circuit breaker provisions, and procedures for the establishment of daily settlement prices;

(vii) Position limits, position accountability standards, and position reporting requirements;

(viii) Delivery points and locational price differentials;

(ix) Delivery standards and procedures, including fees related to delivery or the delivery process; alternatives to delivery and applicable penalties or sanctions for failure to perform;

(x) If cash settled; the definition, composition, calculation and revision of the cash settlement price or index;

(xi) Payment or collection of commodity option premiums or margins;

(xii) Option exercise price, if it is constant, and method for calculating the exercise price, if it is variable;

(xiii) Threshold prices for an option contract, the existence of which is contingent upon those prices; and

(xiv) Any restrictions or requirements for exercising an option; and

(2) For a swap:

(i) Identification of the major group, category, type or class in which the swap falls (such as an interest rate, commodity, credit or equity swap) and of any further sub-group, category, type or class that further describes the swap;

(ii) Notional amounts, quantity standards, or other unit size characteristics;

(iii) Any applicable premiums or discounts for delivery of nonpar products;

(iv) Trading hours and the listing of swaps;

(v) Pricing basis for establishing the payment obligations under, and market-to-market value of, the swap including, as applicable, the accrual start dates, termination or maturity dates, and, for each leg of the swap, the initial cash

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flow components, spreads, and points, and the relevant indexes, prices, rates, coupons, or other price reference measures;

(vi) Any price limits, trading halts, or circuit breaker provisions, and procedures for the establishment of daily settlement prices;

(vii) Position limits, position accountability standards, and position reporting requirements;

(viii) Payment and reset frequency, day count conventions, business calendars, and accrual features;

(ix) If physical delivery applies, delivery standards and procedures, including fees related to delivery or the delivery process, alternatives to delivery and applicable penalties or sanctions for failure to perform;

(x) If cash settled, the definition, composition, calculation and revision of the cash settlement price, and the settlement currency;

(xi) Payment or collection of option premiums or margins;

(xii) Option exercise price, if it is constant, and method for calculating the exercise price, if it is variable;

(xiii) Threshold prices for an option, the existence of which is contingent upon those prices;

(xiv) Any restrictions or requirements for exercising an option; and

(xv) Life cycle events.

§ 40.2 Listing products for trading by certification.

(a) A designated contract market or a swap execution facility must comply with the submission requirements of this section prior to listing a product for trading that has not been approved under § 40.3 of this part or that remains dormant subsequent to being submitted under this section or approved under § 40.3 of this part. A submission shall comply with the following conditions:

(1) The designated contract market or the swap execution facility has filed its submission electronically in a format and manner specified by the Secretary of the Commission with the Secretary of the Commission;

(2) The Commission has received the submission by the open of business on the business day preceding the product's listing; and

(3) The submission includes:

(i) A copy of the submission cover sheet in accordance with the instructions in appendix D to this part;

(ii) A copy of the product's rules, including all rules related to its terms and conditions;

(iii) The intended listing date;

(iv) A certification by the designated contract market or the swap execution facility that the product to be listed complies with the Act and Commission regulations thereunder;

(v) A concise explanation and analysis of the product and its compliance with applicable provisions of the Act, including core principles, and the Commission's regulations thereunder. This explanation and analysis shall either be accompanied by the documentation relied upon to establish the basis for compliance with applicable law, or incorporate information contained in such documentation, with appropriate citations to data sources;

(vi) A certification that the registered entity posted a notice of pending product certification with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the registered entity's Web site. Information that the registered entity seeks to keep confidential may be redacted from the documents published on the registered entity's Web site but must be republished consistent with any determination made pursuant to § 40.8(c)(4);

(vii) A request for confidential treatment, if appropriate, as permitted under § 40.8.

(b) *Additional information.* If requested by Commission staff, a registered entity shall provide any additional evidence, information or data that demonstrates that the contract meets, initially or on a continuing basis, the requirements of the Act or the Commission's regulations or policies thereunder.

(c) *Stay.* The Commission may stay the listing of a contract pursuant to paragraph (a) of this section during the pendency of Commission proceedings for filing a false certification or during the pendency of a petition to alter or amend the contract terms and conditions pursuant to Section 8a(7) of the