

# Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 37, 38, 39 and 40

RIN 3038-AB63

#### Amendments to New Regulatory Framework for Trading Facilities and Clearing Organizations

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed Rules.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is proposing a number of technical amendments to its rules implementing the Commodity Futures Modernization Act of 2000 with respect to trading facilities and clearing organizations. The Commission is proposing additional categories of exchange rules or rule amendments that need not be self-certified to the Commission; amendments to the definitions of "rule" and "dormant contract;" the addition of new definitions of "dormant contract market," "dormant derivatives transaction execution facility," and "dormant derivatives clearing organization"; and the addition of a procedure for listing or relisting products for trading on a registered entity that has become dormant.

**DATES:** Comments must be received by June 25, 2002.

**ADDRESSES:** Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418-5521 or by e-mail to [secretary@cftc.gov](mailto:secretary@cftc.gov). Reference should be made to "Amendments to Trading Facility Rules."

**FOR FURTHER INFORMATION CONTACT:** Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW.,

Washington, DC 20581. Telephone: (202) 418-5260. E-mail: [PArchitzel@cftc.gov](mailto:PArchitzel@cftc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Commission, on August 10, 2001, promulgated rules implementing those provisions of the Commodity Futures Modernization Act of 2000 (CFMA) relating to trading facilities.<sup>1</sup> 66 FR 42256. These rules, parts 36 through 40 of the Commission's rules, became effective on October 9, 2001.

The CFMA profoundly altered federal regulation of commodity futures and option markets. The new statutory framework established two categories of markets subject to Commission regulatory oversight, designated contract markets (contract markets) and registered derivatives transaction execution facilities (DTFs), and two categories of exempt markets, exempt boards of trade and, under section 2(h)(3) of the Commodity Exchange Act (Act), exempt commercial markets. The Commission's rules relating to trading facilities established administrative procedures necessary to implement the CFMA, interpreted certain of the CFMA's provisions and provided guidance on compliance with various of its requirements. In addition, the Commission, under its exemptive authority, in a limited number of instances, provided relief from, or greater flexibility than, the CFMA's provisions. The Commission is proposing a limited number of amendments responding to initial issues that have arisen in administering its implementing rules, or which are technical in nature. The Commission will consider as appropriate additional amendments to the rules implementing the CFMA related to trading facilities based upon further administrative experience.

##### II. The Proposed Rules

###### *A. Dormant Contract Markets and Products*

The Commission has long required boards of trade, before relisting a dormant contract for trading, to demonstrate that the contract continues

## Federal Register

Vol. 67, No. 81

Friday, April 26, 2002

to meet the Act's requirements. See 17 CFR 5.2. This requirement was based upon the premise that contracts that have been dormant for a significant period of time may not have been updated to reflect intervening changes in cash-market practices, and therefore may no longer meet applicable statutory and regulatory requirements.

Accordingly, the relisting of a dormant contract was treated in some respects similarly to the designation of a new contract.

Part 40 of the Commission's rules implementing the CFMA retains the concept that the Act's requirements for listing a new product for trading should also be applicable when relisting a dormant contract for trading. Specifically, Commission rule 40.2 requires that, before either listing a contract or relisting a dormant contract for trading, registered entities certify that the product complies with the Act. The Commission is proposing to amend its part 40 requirements relating to dormant contracts in two ways.

First, the Commission is proposing to revise the exemptive period in the definition of "dormant contract" in rule 40.1 from the time following "initial listing" to the time following initial exchange certification or Commission approval. The Commission originally used "initial listing" to mark the beginning of the exemptive period based upon its belief that registered entities routinely would certify products to the Commission shortly before trading was imminent as permitted by rule 40.2. However, many exchanges have continued their prior practice of fulfilling regulatory requirements well in advance of a product's anticipated listing date. In addition, some exchanges have certified to the Commission, but have never listed for trading, a number of new products. Accordingly, the Commission is proposing that the exemptive period under the dormant contract definition begin running from the time of certification or Commission approval. Second, in light of the far greater rapidity with which markets innovate and change today compared to when the dormant contract rule was first promulgated and the lessened burden of a simple self-certification compared to the previous requirement that dormant contracts be approved by the Commission prior to relisting, and for

<sup>1</sup> The CFMA was intended, in part, "to promote innovation for futures and derivatives," "to reduce systemic risk," and "to transform the role of the Commission to oversight of the futures markets." See section 2 of the CFMA.

consistency with the operation of other rules, the Commission is proposing to amend rule 40.1 to reduce the grace period during which a new contract is exempt from being defined as dormant from 60 to 36 complete calendar months.

The Commission also is proposing to amend rule 40.2 so that it would apply in instances where the registered entity itself has become dormant. Prior to enactment of the CFMA, the term "designated contract market" denoted the Commission-approved products traded on a board of trade.<sup>2</sup> Accordingly, prior to the CFMA, a board of trade's initial application for designation as a contract market in a commodity triggered review of both the general requirements for designation as a contract market as well as those requirements that were product-specific. If a board of trade determined to relist a contract for trading after all of its contracts had become dormant, the Commission would have reviewed both the terms and conditions of the product to be relisted as well as whether the board of trade continued to meet the general designation requirements. The Commission is proposing to amend parts 37, 38, 39 and 40 of its rules to clarify that, when a registered entity that has become dormant determines to list or relist an initial product for trading (or in the case of a derivatives clearing organization, to accept a product for clearing), it must demonstrate that it continues to satisfy the criteria for designation or registration.<sup>3</sup> In making such a demonstration, a registered entity may rely upon previously-submitted materials that still pertain to, and accurately describe, current conditions.

<sup>2</sup> In contrast, the CFMA redefined the meaning of "designated contract market" to refer to the approved or licensed facility on which futures contracts and commodity options are traded.

<sup>3</sup> The proposed definitions of "dormant contract market," "dormant derivatives transaction execution facility," and "dormant derivatives clearing organization" provide for a 36-month initial exemptive period that would begin when the Commission issues an order, including conditional orders, designating a contract market or registering a DTF or a derivatives clearing organization.

The Commission is also proposing two technical amendments related to continuing goodstanding designation or registration status. The first would make clear that the notification procedure available to contract markets to operate as a DTF applies only to active contract markets. Accordingly, before using this notification procedure, dormant contract markets must reinstate their active contract market status. Of course, they could also become a registered DTF by application. The second would provide that, upon a change of ownership of a contract market or DTF, the new owners must certify that the facility continues to meet the respective designation or registration requirements.

#### B. Product Approval Procedures

Contract markets or DTFs may request that the Commission review and approve new products and new rules or rule amendments. The Commission is proposing to amend rules 40.3 and 40.5 to include a provision similar to that for applications for contract market designation and DTF registration, that the applicant or submitting entity identify with particularity information in the submission that will be subject to a request for confidential treatment and support that request for confidential treatment with reasonable justification. See rules 38.3(a)(5) and 37.5(b)(5). Proposed rule 40.3 also provides that the terms and conditions of products for which approval is voluntarily requested will be made publicly available at the time of their submission to the Commission to enable the Commission, by obtaining the views of market participants and others, to ascertain whether the proposed product would be readily susceptible to manipulation, or otherwise violate the Act.<sup>4</sup> Finally, the Commission is proposing a new rule 40.8 to make clear that all other information required by the core principles to be made public<sup>5</sup> by a registered entity will be treated as public information by the Commission at the time the Commission issues an order of designation or registration, a registered entity is deemed approved, or a rule or rule amendment is approved or deemed approved by the Commission or

<sup>4</sup> Commission staff routinely conduct trade interviews when reviewing novel instruments to ascertain the relative susceptibility of a product to being manipulated. To be meaningful, these interviews require the release of the proposed instrument's terms and conditions. Generally, the Commission also intends to continue its long-standing practice of requesting public comment on the terms and conditions of new products under review for Commission approval by publication of notices in the **Federal Register**. In instances where notice in the **Federal Register** is impracticable or otherwise unnecessary, notice of a submission for voluntary approval and of the public availability of the proposed product's terms and conditions will be through the Commission's internet web site ([www.cftc.gov](http://www.cftc.gov)).

The terms and conditions of products eligible for trading by self-certification must be made publicly available by the contract market (Core Principle 7) or the DTF (Core Principle 4), and will be available from the Commission, at the time that the exchange legally could commence trading—the beginning of the business day following certification to the Commission.

<sup>5</sup> This requirement is limited to information required to be made public by a registered entity under a core principal, and does not apply to additional materials that may be filed in support of an application for designation or registration. For example, section 5(d)(7) of the Act requires contract markets to make publicly available information concerning "the terms and conditions of the contracts of the contract market and the mechanisms for executing transactions on or through the facilities."

can first be made effective by the registered entity.

#### C. Exchange Fees

The Commission is also proposing to amend rules 40.1, 40.4 and 40.6 explicitly to address the procedures applicable to the imposition or amendment of exchange fees. Generally, the Commission is clarifying that only fees related to delivery of an enumerated agricultural commodity would be subject to the prior-approval requirements of the Act, and that all other fees would be subject only to the certification requirement. Fees or fee changes of any type of less than \$1.00 are proposed to be exempt from the certification requirement (or the prior-approval requirement, if applicable) as de minimis. Specifically, the Commission is proposing to amend the definition of "terms and conditions" in rule 40.1 to reference explicitly delivery-related fees. It is also proposing to amend rule 40.4 to make clear, however, that the imposition or amendment of such delivery-related fees by less than \$1.00 per contract is not material for purposes of the prior-approval requirement relating to amendments of the terms or conditions of contracts on agricultural commodities.<sup>6</sup> Moreover, the Commission is proposing to amend rule 40.6 to provide that the imposition or change of any fee by less than \$1.00, including delivery-related fees, need not be certified to the Commission.<sup>7</sup>

#### D. Definition of Rule

The Commission is also proposing to amend the definition of "rule" in part 40.1<sup>8</sup> to exclude from its meaning

<sup>6</sup> Separately, the Commission is proposing to revise the list of rule amendments that are not material changes to futures contracts on the enumerated agricultural commodities to clarify that rule changes not required to be certified to the Commission under rule 40.6(c) are also not material.

<sup>7</sup> Such a certification includes the exchange's determination that the fee or fee change complies with the exchange's obligation under Core Principle 18 that its actions avoid resulting in an unreasonable restraint of trade or imposing any material anticompetitive burden on trading.

<sup>8</sup> With respect in general to the definition of "rule," Commission staff in recent months has learned, through bulletins and notices to the members of registered entities, of a number of rule changes that were not appropriately submitted to the Commission for review under Part 40. The Commission reminds registered entities that the definition of "rule" under part 40.1 encompasses more than just provisions labeled as "rules" in rulebooks, but includes, among other things, resolutions, interpretations and stated policies. In order to relieve any administrative burdens, registered entities may submit rule changes to the Commission in the form of member bulletins and notices, so long as those submissions are labeled

Continued

exchange actions relating to the setting of margin levels, except with respect to security futures products and contracts on stock indices. Prior to the CFMA, section 5(a)(12) of the Act required that all changes to contract terms and conditions, with the exception of rules relating to the setting of margin levels, be submitted to the Commission for prior approval. The ability to adjust margin levels was afforded this special status because of the recognized need for exchanges to change margin levels rapidly, often changing margin levels within a single trading session, in response to changing market conditions. In section 113 of the CFMA, Congress removed the prior-approval provision, providing instead that registered entities could amend their rules by self-certification. However, there is no indication that Congress intended thereby to affect the special status accorded rules relating to the setting of margin levels.<sup>9</sup> Accordingly, the Commission believes that specifically excluding the setting of margin levels (except with respect to stock index products and security futures products) from the definition of “rule” is consistent with Congress’ intent and with the public interest.<sup>10</sup>

### III. Cost-Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. Section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15 simply requires the Commission to “consider the costs and benefits” of its action, in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the

and, if necessary, certified in accordance with the procedural requirements of part 40.

<sup>9</sup> In this regard, Congress did not modify the Act’s other provisions relating to margins. See section 2(a)(C)(v).

<sup>10</sup> The Commission is also proposing a number of technical amendments. Appendix C to part 40 details the information that foreign boards of trade should include in a request for no-action relief to offer and sell to persons in the United States futures contracts on broad-based foreign securities indices. The Commission is proposing to amend that guidance to incorporate the changes made by the CFMA to the criteria for designating such stock indexes. The Commission is also proposing conforming changes to a number of delegations in the rules and to several other provisions.

Commission could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The proposed rules constitute a package of largely procedural amendments to the rules it recently promulgated to implement the CFMA. Many of the proposed amendments merely clarify or make explicit existing requirements. Others reduce required submissions to the Commission. Except for the proposal to require that dormant contract markets reapply for designation prior to listing products for trading, none of the proposed amendments imposes a significant obligation, burden or cost on any person or registered entity. With regard to dormant contract markets, the public interest in ensuring that a dormant market meets the requirements of the Act when it lists or relists an initial product for trading outweigh the burden of reapplying for contract market designation. The cost of reapplying for designation should be diminished to the extent that a contract market has kept its rules, trading platform and other aspects of its infrastructure up-to-date during the period it was dormant. On the other hand, to the extent that a dormant contract market has not kept its infrastructure up-to-date during the period of dormancy, the public interest in a review of its reapplication increases.

After considering the five factors enumerated in the Act, the Commission has determined to propose the revisions to its rules discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposed rules with their comment letters.

### IV. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The rules adopted herein would affect contract markets and other registered entities. The Commission has previously established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its rules on small entities in

accordance with the RFA.<sup>11</sup> In its previous determinations, the Commission has concluded that contract markets, DTFs and clearing organizations are not small entities for the purpose of the RFA.<sup>12</sup>

Accordingly, the Commission does not expect the rules, as proposed herein, to have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on this finding and on its proposed determination that the trading facilities covered by these rules would not be small entities for purposes of the RFA.

#### B. Paperwork Reduction Act of 1995

This proposed rulemaking contains information-collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

*Collection of Information:* Rules Relating to Part 37, Establishing Procedures for Entities to be Registered as Derivatives Transaction Execution Facilities (DTFs), OMB Control Number 3038–0053. The proposed rules will not change the burden previously approved by OMB.

The estimated burden was calculated as follows:

*Estimated number of respondents:* 10.  
*Annual responses by each respondent:* 1.

*Total annual responses:* 10.  
*Estimated average hours per response:* 200.

*Annual reporting burden:* 2,000.

*Collection of Information:* Rules Relating to Part 38, Establishing Procedures for Entities to Become Designated as Contract Markets, OMB Control Number 3038–0052. The proposed rules will not change the burden previously approved by OMB.

The estimated burden was calculated as follows:

*Estimated number of respondents:* 10.  
*Annual responses by each respondent:* 1.

*Total annual responses:* 10.  
*Estimated average hours per response:* 300.

*Annual reporting burden:* 3,000.

<sup>11</sup> 47 FR 18618–21 (Apr. 30, 1982).

<sup>12</sup> 47 FR 18618, 18619 (April 30, 1982) (discussing contract markets); 66 FR 42256, 42268 (August 10, 2001) (discussing DTFs); 66 FR 45605, 45609 (August 29, 2001) (discussing DCOs).

*Collection of Information:* Rules Relating to Part 39, Establishing Procedures for Entities to Become Registered as Derivatives Clearing Organizations, OMB Control Number 3038-0051. The proposed rules will not change the burden previously approved by OMB.

The estimated burden was calculated as follows:

*Estimated number of respondents:* 10.  
*Reports annually by each respondent:*

1. *Total annual responses:* 10.  
*Estimated Average hours per response:* 200.

*Annual burden in fiscal year:* 2,000.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in:

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of collecting information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st

Street, NW., Washington, DC 20581, (202) 418-5160.

#### List of Subjects

##### 17 CFR Part 37

Commodity futures, Commodity Futures Trading Commission.

##### 17 CFR Part 38

Commodity futures, Commodity Futures Trading Commission.

##### 17 CFR Part 39

Commodity futures, Consumer protection.

##### 17 CFR Part 40

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000), and in particular, sections 1a, 2, 3, 4, 4c, 4i, 5, 5a, 5b, 5c, 5d, 6 and 8a thereof, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

#### PART 37—DERIVATIVES TRANSACTION EXECUTION FACILITIES

1. The authority citation for part 37 is revised to read as follows:

**Authority:** 7 U.S.C. 2, 5, 6, 6c, 6(c), 7a and 12a, as amended by Appendix E of Pub. L. 106-554, 114 Stat. 2763A-365.

2. Section 37.2 is revised to read as follows:

#### §37.2 Exemption.

Contracts, agreements or transactions traded on a derivatives transaction execution facility registered as such with the Commission under section 5a of the Act, the facility and the facility's operator are exempt from all Commission regulations for such activity, except for the requirements of this part 37 and §§ 1.3, 1.31, 1.59(d), 1.63(c), 15.05, 33.10, part 40, part 41 and part 190 of this chapter, and as applicable to the market, parts 15 through 21 of this chapter, which are applicable to a registered derivatives transaction execution facility as though they were set forth in this section and included specific reference to derivatives transaction execution facilities.

3. Section 37.5 is amended by revising paragraphs (a), (b), and (f)(1) to read as follows:

#### §37.5 Procedures for registration.

(a) *Notification by contract markets.*

(1) To operate as a registered derivatives transaction execution facility pursuant to section 5a of the Act, a board of trade, facility or entity that is designated as a contract market, which is not a dormant contract market as defined in § 40.1 of this chapter, must:

(i) Comply with the core principles for operation under section 5a(d) of the Act and the provisions of this part 37; and

(ii) Notify the Commission of its intent to so operate by filing with the Secretary of the Commission at its Washington, DC, headquarters a copy of the facility's rules (which may be trading protocols) or a list of the designated contract market's rules that apply to operation of the derivatives transaction execution facility, and a certification by the contract market that it meets:

(A) The requirements for trading of section 5a(b) of the Act; and

(B) The criteria for registration under section 5a(c) of the Act.

(2) Before using the notification procedure of paragraph (a) of this section for registration as a derivatives transaction execution facility, a dormant contract market as defined in § 40.1 of this chapter must reinstate its designation under § 38.3(a)(2) of this chapter.

(b) *Registration by application.*—(1)

*Initial registration.* A board of trade, facility or entity shall be deemed to be registered as a derivatives transaction execution facility thirty days after receipt (during the business hours defined in § 40.1 of this chapter) by the Secretary of the Commission at its Washington, DC, headquarters, of an application for registration as a derivatives transaction execution facility unless notified otherwise during that period, or, as determined by Commission order, registered upon conditions, if:

(i) The application demonstrates that the applicant satisfies the requirements for trading and the criteria for registration of sections 5a(b) and 5a(c) of the Act, respectively;

(ii) The submission is labeled “Application for DTF Registration”;

(iii) The submission includes:

(A) The derivatives transaction execution facility's rules, which may be trading protocols;

(B) Any agreements entered into or to be entered into between or among the facility, its operator or its participants, technical manuals and other guides or instructions for users of such facility, descriptions of any system test procedures, tests conducted or test

results, and descriptions of the trading mechanism or algorithm used or to be used by such facility, to the extent such documentation was otherwise prepared; and

(C) To the extent that compliance with the requirements for trading or the criteria for recognition is not self-evident, a brief explanation of how the rules or trading protocols satisfy each of the conditions for registration;

(iv) The applicant does not amend or supplement the application for recognition, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period;

(v) The applicant identifies with particularity information in the application that will be subject to a request for confidential treatment and supports that request for confidential treatment with reasonable justification; and

(vi) The applicant has not instructed the Commission in writing at the time of submission of the application or during the review period to review the application pursuant to the time provisions of and procedures under section 6 of the Act.

(2) *Reinstatement of dormant registration.* Before listing products for trading, a dormant derivatives transaction execution facility as defined in § 40.1 must reinstate its registration under the procedures of paragraphs (a)(1) or (b)(1) of this section, as applicable; *provided however*, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

\* \* \* \* \*

(f) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Trading and Markets and separately to the Director of Economic Analysis or such other employee or employees as the Directors may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to exercise the functions provided under paragraph (d) of this section.

\* \* \* \* \*

4. Section 37.6 is amended by revising paragraphs (a), (b), (b)(1), (b)(2) and (b)(2)(i) introductory text, (b)(2)(iii), and (c) to read as follows:

#### **§ 37.6 Compliance with core principles.**

(a) *In general.* To maintain registration as a derivatives transaction execution facility upon commencing

operations by listing products for trading or otherwise, or for a dormant derivatives transaction execution facility as defined in § 40.1 of this chapter that has been reinstated under § 37.5(b)(2) upon recommencing operations by relisting products for trading or otherwise, and on a continuing basis thereafter, the derivatives transaction execution facility must have the capacity to be, and be, in compliance with the core principles of section 5a(d) of the Act.

(b) *New and reinstated derivatives transaction execution facilities.*—(1) *Certification of compliance.* Unless an applicant for registration or for reinstatement of registration has chosen to make a voluntary demonstration under paragraph (b)(2) of this section, a newly registered derivatives transaction execution facility at the time it commences operations, or a dormant derivatives transaction execution facility as defined in § 40.1 of this chapter at the time that it recommences operations, must certify to the Commission that it has the capacity to, and will, operate in compliance with the core principles under section 5a(d) of the Act.

(2) *Voluntary demonstration of compliance.* An applicant for registration or for reinstatement of registration may choose to make a voluntary demonstration of its capacity to operate in compliance with the core principles as follows:

(i) At least thirty days prior to commencing or recommencing operations, the applicant for registration or for reinstatement of registration must file (during the business hours defined in § 40.1 of this chapter) with the Secretary of the Commission at its Washington, DC, headquarters, either separately or with the application required by § 37.5, a submission that includes:

\* \* \* \* \*

(iii) If it appears that the applicant has failed to make the requisite showing, the Commission will so notify the applicant at the end of that period. Upon commencement or recommencement of operations by the derivatives transaction execution facility, such a notice may be considered by the Commission in a determination to issue a notice of violation of core principles under section 5c(d) of the Act.

(c) *Existing derivatives transaction execution facilities.*—(1) *In general.* Upon request by the Commission, a registered derivatives transaction execution facility shall file with the Commission such data, documents and other information as the Commission

may specify in its request that demonstrates that the registered derivatives transaction execution facility is in compliance with one or more core principles as specified in the request or that is requested by the Commission to enable the Commission to satisfy its obligations under the Act.

(2) *Change of owners.* Upon a change of ownership of an existing registered derivatives transaction execution facility, the new owner shall file with the Secretary of the Commission at its Washington, D.C., headquarters, a certification that the derivatives transaction execution facility meets the requirements for trading and the criteria for registration of sections 5a(b) and 5a(c) of the Act, respectively.

\* \* \* \* \*

## **PART 38—DESIGNATED CONTRACT MARKETS**

5. The authority citation for Part 38 is revised to read as follows:

**Authority:** 7 U.S.C. 2, 5, 6, 6c, 7 and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

6. Section 38.2 is revised to read as follows:

### **§ 38.2 Exemption.**

Agreements, contracts, or transactions traded on a designated contract market under section 6 of the Act, the contract market and the contract market's operator are exempt from all Commission regulations for such activity, except for the requirements of this part 38 and §§ 1.3, 1.12(e), 1.31, 1.37(c)–(d), 1.38, 1.52, 1.59(d), 1.63(c), 1.67, 33.10, part 9, parts 15 through 21, part 40, part 41 and part 190 of this chapter.

7. Section 38.3 is amended by revising paragraph (a) to read as follows:

### **§ 38.3 Procedures for designation by application.**

(a)(1) *Initial Application.* A board of trade or trading facility shall be deemed to be designated as a contract market sixty days after receipt (during the business hours defined in § 40.1 of this chapter) by the Secretary of the Commission at its Washington, DC, headquarters, of an application for designation unless notified otherwise during that period, or, as determined by Commission order, designated upon conditions, if:

(i) The application demonstrates that the applicant satisfies the criteria for designation of section 5(b) of the Act, the core principles for operation under section 5(d) of the Act and the provisions of this part 38;

(ii) The application is labeled as being submitted pursuant to this part 38;

(iii) The application includes:

(A) A copy of the applicant's rules and any technical manuals, other guides or instructions for users of, or participants in, the market, including minimum financial standards for members or market participants;

(B) A description of the trading system, algorithm, security and access limitation procedures with a timeline for an order from input through settlement, and a copy of any system test procedures, tests conducted, test results and the nature of contingency or disaster recovery plans;

(C) A copy of any documents pertaining to the applicant's legal status and governance structure, including governance fitness information;

(D) A copy of any agreements or contracts entered into or to be entered into by the applicant, including partnership or limited liability company, third-party regulatory service, member or user agreements, that enable or empower the applicant to comply with a designation criterion or core principal; and

(E) To the extent that any of the items in § 38.3(a)(1)(iii)(A)–(D) raise issues that are novel, or for which compliance with a condition for designation is not self-evident, a brief explanation of how that item and the application satisfies the conditions for designation;

(iv) The applicant does not amend or supplement the designation application, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period;

(v) The applicant identifies with particularity information in the application that will be subject to a request for confidential treatment and supports that request for confidential treatment with reasonable justification; and

(vi) The applicant has not instructed the Commission in writing at the time of submission of the application or during the review period to review the application pursuant to procedures under section 6 of the Act.

(2) *Reinstatement of dormant designation.* Before listing or relisting products for trading, a dormant designated contract market as defined in § 40.1 of this chapter must reinstate its designation under the procedures of paragraph (a)(1) of this section; *provided however*, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

8. Section 38.4(a)(2) is revised to read as follows:

#### **§ 38.4 Procedures for listing products and implementing contract market rules.**

(a) *Request for Commission approval of rules and products.* (1) \*

(2) Notwithstanding the forty-five day review period for voluntary approval under §§ 40.3(b) and 40.5(b) of this chapter, the operating rules and the terms and conditions of products submitted for voluntary Commission approval under § 40.3 or § 40.5 of this chapter that have been submitted at the same time as an application for contract market designation or an application under § 38.3(a)(2) to reinstate the designation of a dormant contract market as defined in § 40.1 of this chapter, or while one of the foregoing is pending, will be deemed approved by the Commission no earlier than the facility is deemed to be designated or reinstated.

\* \* \* \* \*

9. Section 38.5 is amended by adding a new paragraph (c) to read as follows:

#### **§ 38.5 Information relating to contract market compliance.**

\* \* \* \* \*

(c) Upon a change of ownership of an existing designated contract market, the new owner shall file with the Secretary of the Commission at its Washington, DC, headquarters, a certification that the designated contract market meets all of the requirements of sections 5(b) and 5(d) of the Act and the provisions of this part 38.

### **PART 39—DERIVATIVES CLEARING ORGANIZATIONS**

10. The authority citation for part 39 is revised to read as follows:

**Authority:** 7 U.S.C. 7b as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

11. Section 39.4 is amended by revising the section heading, by redesignating the text in paragraph (c) as paragraph (c)(2) and by adding a new paragraph (c)(1) to read as follows:

#### **§ 39.4 Procedures for implementing derivatives clearing organization rules and clearing new products.**

\* \* \* \* \*

(c) *Acceptance of new products for clearing.* (1) A dormant derivatives clearing organization within the meaning of § 40.1 of this chapter may not accept for clearing a new product until its registration as a derivatives clearing organization is reinstated under the procedures of § 39.3 of this part; *provided however*, that an application for reinstatement may rely upon

previously submitted materials that still pertain to, and accurately describe, current conditions.

\* \* \* \* \*

### **PART 40—PROVISIONS COMMON TO CONTRACT MARKETS, DERIVATIVES TRANSACTION EXECUTION FACILITIES AND DERIVATIVES CLEARING ORGANIZATIONS**

12. The authority citation for part 40 is revised to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a, 8 and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

13. Section 40.1 is amended by revising the definitions of *dormant contract*, *rule*, and paragraph (6) of *terms or conditions* and by adding in alphabetic placement definitions of *business hours*, *dormant contract market*, *dormant derivatives clearing organization* and *dormant derivatives transaction execution facility*, to read as follows:

#### **§ 40.1 Definitions.**

\* \* \* \* \*

*Business hours* means the hours between 8:15 a.m. and 4:45 p.m., eastern standard time or eastern daylight savings time, whichever is currently in effect in Washington, DC, all days except Saturdays, Sundays and legal public holidays.

*Dormant contract market* means any designated contract market on which no trading has occurred for a period of six complete calendar months; *provided, however*, no contract market shall be considered to be dormant until the end of 36 complete calendar months following the day that the order of designation was issued or that the contract market was deemed to be designated.

*Dormant derivatives clearing organization* means any derivatives clearing organization that has not accepted 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 six complete calendar months; *provided, however*, no derivatives clearing organization shall be considered to be dormant until the end of 36 complete calendar months following the day that the order of registration was issued or that the derivatives clearing organization was deemed to be registered.

*Dormant derivatives transaction execution facility* means any derivatives transaction execution facility on which no trading has occurred for a period of

six complete calendar months; provided, however, no derivatives transaction execution facility shall be considered to be dormant until the end of 36 complete calendar months following the day that the order of registration was issued or that the derivatives transaction execution facility was deemed to be registered.

*Dormant contract or dormant product* means any commodity futures or option contract or other agreement, contract, transaction or instrument in which no trading has occurred in any future or option expiration for a period of six complete calendar months; *provided, however*, no contract or instrument shall be considered to be dormant until the end of thirty-six complete calendar months following initial exchange certification or Commission approval.

\* \* \* \* \*

*Rule* means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, term and condition, trading protocol, agreement or instrument corresponding thereto, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a contract market, derivatives transaction execution facility or derivatives clearing organization or by the governing board thereof or any committee thereof, except those provisions relating to the setting of levels of margin for commodities other than those subject to the provisions of section 2(a)(1)(C)(v) of the Act and security futures as defined in section 1a(31) of the Act.

*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, specification of settlement or delivery standards and procedures, and establishment of buyers' and sellers' rights and obligations under the contract. Terms and conditions include provisions relating to the following:

\* \* \* \* \*

(6) 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;

\* \* \* \* \*

14. Section 40.3 is amended by revising paragraph (a)(4) and adding paragraph (a)(5) to read as follows:

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

(a) \* \* \*

(4) The submission identifies 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 supports that request for confidential treatment with reasonable justification; and

(5) The submission includes the fee required under Appendix B to this part.

\* \* \* \* \*

15. Section 40.4 is amended by revising paragraphs (b)(5) and (b)(6) and by adding paragraphs (b)(7) and (b)(8) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(5) Changes required to comply with a binding order of a court of competent jurisdiction, or of a rule, regulation or order of the Commission or of another Federal regulatory authority;

(6) 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;

(7) Fees or fee changes of less than \$1.00; and

(8) Any other rule, the text of which has been submitted to the Secretary of the Commission at least ten days prior to its implementation at its Washington, DC, headquarters and that has been labeled "Non-material Agricultural Rule Change," and with respect to which the Commission has not notified the contract market during that period that the rule appears to require or does require prior approval under this section.

16. Section 40.5 is amended by revising paragraphs (a)(1)(v) and (a)(1)(vi) and by adding paragraph (a)(1)(vii) to read as follows:

#### **§ 40.5 Voluntary submission of rules for Commission review and approval.**

(a) \* \* \*

(1) \* \* \*

(v) Note and briefly describe any substantive opposing views expressed with respect to the proposed rule that were not incorporated into the proposed rule prior to its submission to the Commission;

(vi) Identify any Commission regulation that the Commission may need to amend, or sections of the Act or Commission regulations that the Commission may need to interpret in

order to approve the proposed rule. To the extent that such an amendment or interpretation is necessary to accommodate a proposed rule, the submission should include a reasoned analysis supporting the amendment to the Commission's rule or interpretation; and

(vii) Identify with particularity information in the submission (except for a 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.

\* \* \* \* \*

17. Section 40.6 is amended by revising paragraphs (c)(2)(iii), (c)(2)(iv), (c)(3)(ii)(B) and (c)(3)(ii)(C), and by adding paragraph (c)(2)(v) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(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 that 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 of less than \$1.00.

(3) \* \* \*

(ii) \* \* \*

(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; or

\* \* \* \* \*

19. Section 40.7(b)(1) is revised to read as follows:

#### **§ 40.7 Delegations.**

\* \* \* \* \*

(b) \*

(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;

\* \* \* \* \*

20. Part 40 is amended by adding a new § 40.8 to read as follows:

#### **§ 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.

17. Appendix C to part 40 is amended by revising paragraphs (5)(ii) through (vii) to read as follows:

#### **Appendix C—Information That a Foreign Board of Trade Should Submit When Seeking No-Action Relief to Offer and Sell, to Persons Located in the United States, a Futures Contract on a Broad-based Foreign Securities Index Traded on That Board of Trade**

\* \* \* \* \*

(5) \*

(ii) The total capitalization, number of stocks (including the number of unaffiliated issuers if different from the number of stocks), and weighting of the stocks by capitalization and, if applicable, by price in the index as well as the combined weighting of the five highest-weighted stocks in the index;

(iii) Procedures and criteria for selection of individual securities for inclusion in, or

removal from, the index, how often the index is regularly reviewed, and any procedures for changes in the index between regularly scheduled reviews;

(iv) Method of calculation of the cash-settlement price and the timing of its public release;

(v) Average daily volume of trading by calendar month, measured by share turnover and dollar value, in each of the underlying securities for a six-month period of time and, separately, the dollar value of the average daily trading volume of the securities comprising the lowest weighted 25% of the index for the past six calendar months, calculated pursuant to § 41.11;

(vi) If applicable, average daily futures trading volume; and

(vii) A statement that the index is not a narrow-based security index as defined in section 1a(25) of the Act.

Issued in Washington, DC, this 19th day of April, 2002, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02-10031 Filed 4-25-02; 8:45 am]

**BILLING CODE 6351-01-P**

---

## **INTERNATIONAL TRADE COMMISSION**

### **19 CFR Part 201**

#### **Rules of General Application**

**AGENCY:** International Trade Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States International Trade Commission (Commission) proposes to amend its Rules of Practice and Procedure (Rules) to permit persons the option of filing certain documents with the Commission in electronic form instead of in paper form only, as currently required by the Rules. The Commission also proposes amending its Rules of Practice and Procedure to allow electronic service of documents in limited circumstances and to require persons to complete and submit a standard cover sheet when filing documents, either in paper form or in electronic form, with the Commission. The intended effect of these amendments is to provide a choice to persons who wish to file documents electronically and/or serve documents by electronic means on other parties.

**DATES:** To be assured of consideration, written comments must be received by 5:15 p.m. on June 25, 2002.

**ADDRESSES:** A signed original and 8 copies of each set of comments on these proposed amendments, along with a cover letter, should be submitted by mail or hand delivery to Marilyn R. Abbott, Secretary, United States

International Trade Commission, 500 E Street, SW, Room 112, Washington, DC 20436.

#### **FOR FURTHER INFORMATION CONTACT:**

Irene H. Chen, Esq., Office of the General Counsel, United States International Trade Commission, telephone 202-205-3112. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

**SUPPLEMENTARY INFORMATION:** The preamble below is designed to assist readers in understanding these proposed amendments to the Commission Rules. The preamble begins with a discussion of the background leading up to these proposed amendments and ends with a regulatory analysis addressing government-wide statutes and issuances on rulemaking. The Commission encourages members of the public to comment—in addition to any other comments they wish to make on the proposed amendments—on whether the proposed amendments are in language that is sufficiently plain for users of the rules to understand.

#### **Background**

The Government Paperwork Elimination Act (GPEA) (Pub. L. No. 105-277, Div. C, Title XVII), enacted on October 21, 1998, provides for Federal agencies to permit individuals and/or entities the option of transacting business with the agency electronically and to maintain records electronically, when practicable, by October 21, 2003. GPEA also provides that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form. The Commission is authorized by section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. Consistent with GPEA and the Tariff Act of 1930, this notice proposes two (2) amendments to section 201.8 of the Commission's Rules and one (1) amendment to section 201.16 of the Commission's Rules.

The first proposed amendment to section 201.8 would allow persons appearing before the Commission the option of filing certain documents electronically at the Commission's Internet website in lieu of or in addition to filing such documents in paper form. By amending the Rules to allow for