

the Act may be satisfied by an organized exchange or a trading facility with respect to members with trading privileges but having no, or only nominal, equity, in the facility and non-member market participants of the contract market by expelling or by denying future access, either directly or indirectly, to such a person found to have violated the contract market's rules;

(4) *Governance fitness standards.* The requirement to establish appropriate minimum fitness standards for participants having direct access to the facility, under the core principle on fitness pursuant to section 5(d)(14) of the Act, includes natural persons that directly or indirectly have greater than a ten percent ownership interest in the facility; and

(5) *In general.* Appendix A to this part provides guidance to applicants for designation as contract markets on how the criteria for designation under section 5(b) of the Act can be satisfied, and Appendix B to this part provides guidance to applicants for designation and designated contract markets on how the core principles of section 5(d) of the Act can be satisfied;

(c) *Termination of fast track review.* During the sixty-day period for review pursuant to paragraph (a) of this section, the Commission shall notify the applicant seeking designation that the Commission is terminating review under this section and will review the proposal under the time period and procedures of section 6 of the Act, if it appears that the application's form or substance fails to meet the requirements of this part. This termination notification will state the nature of the issues raised and the specific condition of designation that the applicant would violate, appears to violate, or the violation of which cannot be ascertained from the application. Within ten days of receipt of this termination notification, the applicant seeking designation may request that the Commission render a decision whether to designate the contract market or to institute a proceeding to deny the proposed application under procedures specified in section 6 of the Act by notifying the Commission that the applicant views

its submission as complete and final as submitted.

(d) *Request for withdrawal of application for designation or vacation of designation.* An applicant to be designated, or a designated contract market, may withdraw its application or vacate its designation under section 7 of the Act by filing with the Secretary of the Commission at its Washington, DC, headquarters such a request. Withdrawal of an application for designation or vacation of designation shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the application for designation was pending with, or that the facility was designated by, the Commission.

(e) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to notify the entity seeking designation under paragraph (a) of this section that review under those procedures is being terminated or to designate the entity as a contract market upon conditions.

(2) The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph.

(3) Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (e)(1) of this section.

[66 FR 42277, Aug. 10, 2001, as amended at 67 FR 62352, Oct. 7, 2002; 67 FR 62878, Oct. 9, 2002]

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

(a) *Request for Commission approval of rules and products.* (1) An applicant for designation, or a designated contract market, may request that the Commission approve under section 5(c) of the Act, any or all of its rules and subsequent amendments thereto, including both operational rules and the terms or

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conditions of products listed for trading on the facility, prior to their implementation or, notwithstanding the provisions of section 5c(c)(2) of the Act, at anytime thereafter, under the procedures of §§ 40.5 or 40.3 of this chapter, as applicable. A designated contract market may label a product in its rules as, "Listed for trading pursuant to Commission approval," if the product and its terms or conditions have been approved by the Commission and it may label as, "Approved by the Commission," only those rules that have been so approved.

(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.

(b) *Self-certification of rules and products.* Rules of a designated contract market and subsequent amendments thereto, including both operational rules and the terms or conditions of products listed for trading on the facility, not voluntarily submitted for prior Commission approval pursuant to paragraph (a) of this section must be submitted to the Commission with a certification that the rule, rule amendment or product complies with the Act or rules thereunder pursuant to the procedures of §§ 40.6 and 40.2 of this chapter, as applicable. *Provided, however,* any rule or rule amendment that would, for a delivery month having open interest, materially change a term or condition 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, must be submitted to the Commission prior to its implementation for review and approval under § 40.4 of this chapter.

(c) An applicant for designation, or a designated contract market, may request that the Commission consider under the provisions of section 15(b) of the Act any of the contract market's rules or policies, including both operational rules and the terms or conditions of products listed for trading.

[66 FR 42277, Aug. 10, 2001, as amended at 67 FR 62878, Oct. 9, 2002]

§ 38.5 Information relating to contract market compliance.

(a) Upon request by the Commission, a designated contract market shall file with the Commission such information related to its business as a contract market, including information relating to data entry and trade details, in the form and manner and within the time as specified by the Commission in the request.

(b) Upon request by the Commission, a designated contract market shall file with the Commission a written demonstration, containing such supporting data, information and documents, in the form and manner and within such time as the Commission may specify, that the designated contract market is in compliance with one or more core principles as specified in the request.

(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.

[66 FR 42277, Aug. 10, 2001, as amended at 67 FR 62878, Oct. 9, 2002]

§ 38.6 Enforceability.

An agreement, contract or transaction entered into on or pursuant to the rules of a designated contract market shall not be void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable as a result of:

(a) A violation by the designated contract market of the provisions of section 5 of the Act or this part 38; or

(b) Any Commission proceeding to alter or supplement a rule, term or condition under section 8a(7) of the