

§ 40.8

17 CFR Ch. I (4-1-06 Edition)

(d) Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated in paragraph (a) or (b) of this section to the Directors.

[66 FR 42283, Aug. 10, 2001, as amended at 67 FR 62352, Oct. 7, 2002; 67 FR 62880, Oct. 9, 2002; 71 FR 1971, Jan. 12, 2006]

§ 40.8 Availability of public information.

(a) The following sections of all applications to become a registered entity will be public: transmittal letter, proposed rules, the applicant's regulatory compliance chart, documents establishing the applicant's legal status, documents setting forth the applicant's governance structure, and any other part of the application not covered by a request for confidential treatment.

(b) 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, or 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.

[67 FR 62880, Oct. 9, 2002, as amended at 69 FR 67505, Nov. 18, 2004; 71 FR 1971, Jan. 12, 2006]

APPENDIX A TO PART 40—GUIDELINE NO.

1

(a) Application for Designation of Physical Delivery Futures Contracts

A board of trade shall submit:

(1) The rules setting forth the terms and conditions of the futures contract.

(2) A description of the cash market for the commodity on which the contract is based.

(i) The description may include, in addition to or in lieu of materials prepared by the board of trade, 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.

(ii) Where the same, or a closely related commodity, is already designated as a contract market which and is not dormant, the cash market description can be confined to those aspects relevant to particular term(s) or condition(s) which differ from such existing contract.

(3) A demonstration that 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.

For purposes of this demonstration, provide the following information in chart or narrative form.

CONTRACT TERMS AND CONDITIONS

| Term or condition | Exchange proposal | Rule number of identical approved provision, if any ¹ | Explanation as to consistency with, or reason for variance from cash market practice |
|--|-------------------|--|--|
| 1. Commodity characteristics (e.g., grade, quality, weight, class, growth, issuer, origin, maturity, source, rating, etc.) | | | |
| 2. Any quality differentials for nonpar deliveries, or lack thereof | | | |
| 3. Delivery points/region | | | |
| 4. Any locational differentials for nonpar deliveries, or lack thereof | | | |
| 5. Delivery facilities (type, number, capacity, ownership) | | | |
| 6. Contract size and/or trading unit | | | |
| 7. Delivery pack or composition of delivery units | | | |
| 8. Delivery instrument (e.g., warehouse receipt, shipping certificate, bill of lading) | | | |
| 9. Transportation terms (e.g., FOB, CIF, prepay freight to destination) | | | |
| 10. Delivery procedures | | | |
| 11. Delivery months | | | |
| 12. Delivery period and last trading day | | | |
| 13. Inspection/certification procedures (verification of delivery eligibility, any discounts applied for age) | | | |
| 14. Minimum price change (tick) equal to or less than cash market minimum price increment | | | |

CONTRACT TERMS AND CONDITIONS—Continued

| Term or condition | Exchange proposal | Rule number of identical approved provision, if any ¹ | Explanation as to consistency with, or reason for variance from cash market practice |
|--|-------------------|--|--|
| 15. Daily price limit provisions (note relationship to cash market price movements) | | | |
| DELIVERABLE SUPPLIES ² —ESTIMATE OF DELIVERABLE SUPPLIES FOR TRADING MONTH(S) WITH LOWEST SUPPLIES ESTIMATION METHODOLOGY | | | |

¹ If an identical provision has been approved for a nondormant contract in the same commodity, there is no need to provide an explanation in the next column.

² No estimate of deliverable supply is needed if a previously designated nondormant contract is trading. Also, no justification of the spot month limit is needed if the limit is the same as that approved by the Commission for an identical contract in that commodity (relative to the quantity or value of the identical contract). Where more than one contract is based on the same underlying commodity or instrument, positions should be combined for purposes of applying speculative limits.

TERMS AND CONDITIONS RELATED TO SPECULATIVE LIMITS

| Speculative limit | Standard | Level (exchange rule) |
|--|---|-----------------------|
| 1. Spot month | No greater than one-fourth of estimated deliverable supply. | ..... |
| 2. Nonspot individual month or all months combined (financial and energy contract) | 5,000 contract ..... | ..... |
| 3. Nonspot individual month or all months combined (tangible commodity contracts) | 1,000 contracts ..... | ..... |
| 4. Reporting level | Equal to or less than levels specified in CFTC rule 15.03. | ..... |
| 5. Aggregation rule | Same as CFTC rule 150.5(g) or previously approved language. | ..... |

(4) As specifically requested, such 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, including the public interest standard contained in Section 5(7) of the Act, and whether the contract reasonably can be expected to be, or has been, used for hedging and/or price basing on more than an occasional basis, or any other requirement for designation under the Act or Commission rules and policies.

(b) Application for Cash Settled Futures Contracts

A board of trade shall submit:

(1) The rules setting forth the terms and conditions of the proposed futures contract.

(2) A description of the cash market for the commodity on which the contract is based.

(i) The description may include, in addition to or in lieu of materials prepared by

the board of trade, 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.

(ii) Where the same, or a closely related commodity, is already designated as a contract market which is not dormant, the cash market description can be confined to those aspects relevant to particular term(s) or conditions(s) which differ from such existing contract.

(3) A demonstration that 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.

For purposes of this demonstration, provide the following information in chart or narrative form.

CONTRACT TERMS AND CONDITIONS

| Term or condition | Exchange proposal | Rule number of identical approved provision, if any ¹ | Explanation as to consistency with, or reason for variance from, cash market practice |
|--|-------------------|--|---|
| 1. Commodity characteristics (e.g., grade, quality, weight, class, growth, issuer, maturity, source, rating, etc.) | | | |

CONTRACT TERMS AND CONDITIONS—Continued

| Term or condition | | Rule number of identical approved provision, if any ¹ | Explanation as to consistency with, or reason for variance from, cash market practice |
|---|-------|--|---|
| 2. Delivery months, noting any cyclical variations in trading activity that may affect the potential for manipulating the cash settlement price | | | |
| 3. Last trading day | | | |
| 4. Contract size | | | |
| 5. Minimum price change (tick) | | | |
| 6. Daily price limit provisions, relative to cash market price movements. | | | |

¹ If an identical provision has been approved for a nondormant contract in the same commodity, there is not need to provide an explanation in the next column.

TERMS AND CONDITIONS RELATED TO CASH SETTLEMENT PRICE SERIES

| Requirement | Rule number of identical approved provision | Explanation or justification |
|--|---|------------------------------|
| 1. Where an independent third party calculate the cash settlement price series, evidence that the third party does not object to its use and provides safeguards against susceptibility to manipulation | | |
| 2. Where board of trade generates cash settlement price series, specifications of calculation procedure and safeguards in cash settlement process to protect against susceptibility to manipulation (e.g., if self-generated survey, polling sample representative of cash market, but with a minimum of 4 nontrading entities or 8 entities that trade for own account) | | |
| 3. Procedure for, and timeliness of, dissemination to public | | |
| 4. Evidence that price is reliable indicator of cash market values and acceptable for hedging | | |

TERMS AND CONDITIONS RELATED TO SPECULATIVE LIMITS

| Speculative limit | Standard | Level (exchange rule) |
|--|---|-----------------------|
| 1. Spot month | Must be no greater than necessary to minimize the potential for manipulation or distortion of the contract's or the underlying commodity's price. | ..... |
| 2. Nonspot individual month or all months combined (financial and energy contracts). | 5,000 contracts ..... | ..... |
| 3. Nonspot individual month or all months combined (tangible commodity contracts). | 1,000 contracts ..... | ..... |
| 4. Reporting level | Equal to or less than levels specified in CFTC rule 15.03. | ..... |
| 5. Aggregation rule | Same as CFTC rule 150.5(g) or previously approved language. | ..... |

(4) As specifically requested, such 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, including the public interest standard contained in Section 5(7) of the Act, and whether the contract reasonably can be expected to be, or has been, used for hedging and/or price basing on more than an occasional basis, or any other requirement for designation under the Act or Commission rules and policies.

(c) Application for Option Contracts

A board of trade shall submit:

(1) The rules setting forth the terms and conditions of the proposed option contract.

(2)(i) For options on futures contracts, the terms and conditions of the proposed or existing underlying futures contract.

(2)(ii) For options on physical commodities:

(A) A description of the cash market for the commodity on which the contract is based.

(1) The description may include, in addition to or in lieu of material prepared by the board of trade: existing studies by industry trade groups, academics, governmental bodies or other entities; promotional or marketing materials prepared by or for the

Commodity Futures Trading Commission

Pt. 40, App. D

board of trade; reports of consultants; or other materials which provide a description of the underlying cash market.

(2) Where the same, or a closely related commodity, is already designated and is not dormant, the cash market description can be confined to those aspects relevant to par-

ticular term(s) or condition(s) which differ from such existing contract.

(B) Depending on the method of settling the option, the relevant chart for either a physical delivery or cash settled futures contract.

(3) The following completed chart.

TERMS AND CONDITIONS

| Criterion | Applicable CFTC Rule (17 CFR) | Standard | Met by exchange rule number | Justification for not meeting standard, or rule number of identical approved rule |
|--|-------------------------------|--|-----------------------------|---|
| 1. Speculative limits | 150.5 | Combined net position in futures and options on a futures-equivalent basis at the futures position levels, with inter-month spread exemptions that are consistent with those of the futures contracts or consistent with Commission Rule 150.5(e) for underlying future. | ..... | ..... |
| 2. Aggregation rule ... | 150.4 | Same as Rule 150.5(g) or previously approved language. | ..... | ..... |
| 3. Reporting level | 15.00(b)(2) | 50 contracts or fewer ..... | ..... | ..... |
| 4. Strike prices (number listed & increments). | 33.4(b)(1) | Procedures for routine listing of strikes are specified and automatic, provisions for listing discretionary strikes are specified. | ..... | ..... |
| 5. Option expiration & last trading day. | 33.4(b)(2) | Except for options on cash-settled futures contracts, expiration is not less than one business day before the earlier of the last trading day or the first notice day of the underlying future. | ..... | ..... |
| 6. Minimum tick | 33.4(d) | Equal to, or less than, the underlying futures tick. | ..... | ..... |
| 7. Daily price limit, if specified. | 33.4(d) | Equal to, or greater than, the underlying futures price limit. | ..... | ..... |

(4) As specifically requested, such 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, including the public interest standard contained in Section 5(7) of the Act, or any other requirement for designation under the Act or Commission rules and policies.

[64 FR 29221, June 1, 1999. Redesignated at 66 FR 42287, Aug. 10, 2001]

APPENDIX B 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, NW., 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.

APPENDIX C TO PART 40 [RESERVED]

APPENDIX D TO PART 40—SUBMISSION COVER SHEET AND INSTRUCTIONS

A properly completed submission cover sheet must accompany all rule submissions submitted electronically by a designated contract market, registered derivatives transaction execution facility, or registered derivatives clearing organization to the Secretary of the Commodity Futures Trading Commission, at *submissions@cftc.gov* in a format specified by the Secretary of the Commission. Each submission should include the following:

1. *Identifier Code (optional)*—If applicable, the exchange or clearing organization Identifier Code at the top of the cover sheet. Such

codes are commonly generated by the exchanges or clearing organizations to provide an identifier that is unique to each filing (*e.g.*, NYMEX Submission 03-116).

2. *Date*—The date of the filing.

3. *Organization*—The name of the organization filing the submission (*e.g.*, CBOT).

4. *Filing as a*—Check the appropriate box for a designated contract market (DCM), derivatives clearing organization (DCO), or derivatives transaction execution facility (DTEF).

5. *Type of Filing*—Indicate whether the filing is a rule amendment or new product and the applicable category under that heading.

6. *Rule Numbers*—For rule filings only, identify rule number(s) being adopted or modified in the case of rule amendment filings.

7. *Description*—For rule or rule amendment filings only, enter a brief description of the new rule or rule amendment. This narrative should describe the substance of the submission with enough specificity to characterize all essential aspects of the filing.

8. *Other Requirements*—Comply with all filing requirements for the underlying proposed rule or rule amendment. The filing of the submission cover sheet does not obviate the responsibility to comply with any applicable filing requirement (*e.g.*, rules submitted for Commission approval under § 40.5 must be accompanied by an explanation of the purpose and effect of the proposed rule along with a description of any substantive opposing views).

A sample of the required submission cover sheet follows.

| SUBMISSION COVER SHEET | |
|---|------------|
| Exchange Identifier Code (optional) _____ | Date _____ |
| ORGANIZATION | |
| FILING AS A: <input type="checkbox"/> DCM <input type="checkbox"/> DCO <input type="checkbox"/> DTEF | |
| TYPE OF FILING | |
| <ul style="list-style-type: none"> • Rule Amendments <ul style="list-style-type: none"> <input type="checkbox"/> Self-Certification Under Reg. 40.6(a) or 41.24 <input type="checkbox"/> Commission Approval Requested Under Reg. 40.5 or 40.4 (a) <input type="checkbox"/> Notification of Rule Amendment Under Reg. 40.6(c) <input type="checkbox"/> Non-Material Agricultural Rule Change Determination Under Reg. 40.4(b) • New Products <ul style="list-style-type: none"> <input type="checkbox"/> Self-Certification Under Reg. 40.2 or 41.23 <input type="checkbox"/> Commission Approval Requested Under Reg. 40.3 | |
| RULE NUMBERS | |
| DESCRIPTION (Rule Amendments Only) | |
| | |

[69 FR 67505, Nov. 18, 2004, as amended at 71 FR 1971, Jan. 12, 2006]

PART 41—SECURITY FUTURES PRODUCTS

Subpart A—General Provisions

Sec.

- 41.1 Definitions.
- 41.2 Required records.

41.3 Application for an exemptive order pursuant to section 4f(a)(4)(B) of the Act.

41.4–41.9 [Reserved]

Subpart B—Narrow-Based Security Indexes

41.11 Method for determining market capitalization and dollar value of average daily trading volume; application of the definition of narrow-based security index.

41.12 Indexes underlying futures contracts trading for fewer than 30 days.