

## Commodity Futures Trading Commission

## § 40.1

In addressing Core Principle M, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Applicable appropriate domestic and international information-sharing agreements and arrangements including the different types of domestic and international information-sharing arrangements, both formal and informal, which the clearing organization views as appropriate and applicable to its operations.

2. How information obtained from information-sharing arrangements would be used to carry out risk management and surveillance programs:

a. How information obtained from any information-sharing arrangements would be used to further the objectives of the clearing organization's risk management program and any of its surveillance programs including financial surveillance and continuing eligibility of its members/participants;

b. How accurate information is expected to be obtained and the mechanisms or procedures which would make timely use and application of all information; and

c. The types of information expected to be shared and how that information would be shared.

*Core Principle N: ANTITRUST CONSIDERATIONS—Unless appropriate to achieve the purposes of this Act, the derivatives clearing organization shall avoid (i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or (ii) imposing any material anticompetitive burden on trading on the contract market.*

Pursuant to section 5b(c)(3) of the Act, a registered derivatives clearing organization or an entity seeking registration as a derivatives clearing organization may request that the Commission issue an order concerning whether a rule or practice of the organization is the least anticompetitive means of achieving the objectives, purposes, and policies of the Act. The Commission intends to apply section 15(b) of the Act to its consideration of issues under this core principle in a manner consistent with that previously applied to contract markets.

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

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APPENDIX D TO PART 40—SUBMISSION COVER SHEET AND INSTRUCTIONS

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.

SOURCE: 66 FR 42283, Aug. 10, 2001, unless otherwise noted.

#### § 40.1 Definitions.

As used in this part:

(a) *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.

(b) *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 twelve complete calendar months and in which there is no open interest; *provided, however*, no contract or instrument shall be considered to be dormant until the end of 36 complete calendar months following initial exchange certification or Commission approval, or until the designated contract market or derivatives transaction execution facility on which it is traded becomes dormant. Notwithstanding the above, a board of trade may, by certifying to the Commission, self-declare a contract to be dormant at any time following initial exchange certification or Commission approval.

(c) *Dormant contract market* means any designated contract market on which no trading has occurred for a period of twelve 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 initial order of designation was issued.

(d) *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 twelve 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 initial order of registration was issued.

(e) *Dormant derivatives transaction execution facility* means any derivatives transaction execution facility on which no trading has occurred for a period of twelve 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 initial order of registration was issued.

(f) *Dormant rule* means any new rule or rule amendment which the designated contract market, derivatives transaction execution facility or derivatives clearing organization has not made effective and implemented; *provided, however*, no new rule or rule amendment shall be considered to be dormant until the end of twelve complete calendar months following initial certification or Commission approval. Prior to implementing a dormant rule, it should be resubmitted to the Commission, either by certification or for approval.

(g) *Emergency* means any occurrence or circumstance which, in the opinion of the governing board of the contract market, derivatives transaction execution facility or derivatives clearing organization, 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 or transactions on such a trading facility, including: Any manipulative or attempted manipulative activity; any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions; any cir-

cumstances which may materially affect the performance of agreements, contracts or transactions traded on the trading facility, including failure of the payment system or the bankruptcy or insolvency of any participant; any action taken by any governmental body, or any other board of trade, market or facility which may have a direct impact on trading on the trading facility; and any other circumstance which may have a severe, adverse effect upon the functioning of a designated contract market or derivatives transaction execution facility.

(h) *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.

(i) *Terms and conditions* mean 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 cash 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:

- (1) Quality and other standards that define the commodity or instrument underlying the contract;
- (2) Quantity standards or other provisions related to contract size;
- (3) Any applicable premiums or discounts for delivery of nonpar products;
- (4) Trading hours, trading months and the listing of contracts;
- (5) The pricing basis and minimum price fluctuations;

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

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

(8) Delivery points and locational price differentials;

(9) 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;

(10) If cash settled; all provisions related to the definition, composition, calculation and revision of the cash settlement price or index; and

(11) Payment or collection of commodity option premiums or margins.

[71 FR 1967, Jan. 12, 2006]

### § 40.2 Listing products for trading by certification.

(a) A registered entity may list a new product for trading, list a product for trading that has become dormant, or accept for clearing a product that is not traded on a designated contract market or a registered derivatives transaction execution facility, if the following conditions have been met:

(1) The registered entity has filed its submission electronically with the Secretary of the Commission and at the regional office having local jurisdiction over the registered entity, in a format specified by the Secretary of the Commission;

(2) The Commission has received the submission at its headquarters by close of business on the business day preceding the product's listing or acceptance for clearing, 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, or the rules establishing the terms and conditions of the listed product that make it acceptable for clearing;

(iii) The intended listing date; and

(iv) A certification by the registered entity that the product to be listed

complies with the Act and regulations thereunder.

(b) A registered entity shall provide, if requested by Commission staff, additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the requirements of the Act or Commission regulations or policies thereunder which may be beneficial to the Commission in conducting a due diligence assessment of the product and the entity's compliance with these requirements.

(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 to alter or amend the contract terms and conditions pursuant to Section 8a(7) of the Act. The decision to stay the listing of a contract in such circumstances shall not be delegable to any employee of the Commission.

[71 FR 1968, Jan. 12, 2006]

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

(a) *Request for approval.* A designated contract market or registered derivatives transaction execution facility may request under Section 5c(c)(2) of the Act that the Commission approve new products. A submission requesting approval shall:

(1) Be filed electronically with the Secretary of the Commission and at the regional office of the Commission having local jurisdiction over the submitting registered entity in a format specified by the Secretary of the Commission;

(2) Include a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part;

(3) Include a copy of the rules that set forth the contract's terms and conditions;

(4) Comply with the requirements of Appendix A to this part—Guideline No. 1. To demonstrate compliance, the submission shall include:

(i) An explanation, if not self-evident from the rules, as to how the specific terms and conditions satisfy the acceptable practices set forth in Guideline No. 1, Appendix A to Part 40. This