



Commodity Futures Trading Commission

Office of Public Affairs

Three Lafayette Centre

1155 21st Street, NW

Washington, DC 20581

www.cftc.gov

Part 40 Final Rulemaking

The Commodity Futures Trading Commission (Commission) is issuing rules to implement a new statutory framework for certification and approval procedures for new products, new rules and rule amendments submitted to the Commission by registered entities.

Part 40 Provisions

The final rules apply to new registered entities, such as Swap Execution Facilities (“SEFs”) and Swap Data Repositories (“SDRs”).

The final rules implement a new statutory framework for certification and approval procedures for new products, new rules and rule amendments submitted to the Commission by registered entities.

The following new timeline applies to self-certified submissions of new rules and rule amendments (and, notably, does not apply to self-certified new products):

- A new rule or rule amendment will become effective 10 business days after the certified rule or rule amendment is received by the Commission, and to ensure prompt notice to market participants and to increase transparency, the rule requires registered entities to certify that copies of their rule submissions are posted on their websites at the time of the filing;
- The Commission may stay the initial review period for additional 90 days if the Commission determines that the new rule or rule amendment presents novel or complex issues, is certified with an inadequate explanation, or is potentially inconsistent with the CEA or the Commission’s regulations;
- The Commission must provide a 30-day public comment period, within the 90-day review period. The Commission will provide notice of the comment by posting the notice and the rule submission on the Commission’s website;
- The new timeline for the Commission’s review of rule certifications takes effect on July 16, 2011. Section 745 of the Dodd-Frank Act is self-effectuating and does not require a separate rulemaking.

Section 5c(c) of the Commodity Exchange Act requires rules involving material changes to a term or condition of an agricultural contract to be approved by the Commission. This requirement remains unchanged.

Systemically Important Derivatives Clearing Organizations

The final rules require a systemically important derivatives clearing organization (SIDCO) to provide the Commission with a 60-day advance notice of any proposed change to its rules or procedures that could materially affect the nature or level of risks presented by the SIDCO.

Prohibitions

The final rules prohibit the listing, trading, or clearing of products that involve terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal Law.

The final rules prohibit the listing, trading, or clearing of a product involving similar activities and that the Commission determines, in a future rulemaking, to be contrary to the public interest.

If during the review of a new contract, the Commission determines that such product may involve any of the prohibited activity, then the Commission will request that the registered entity suspend the listing or trading of the contract and will conduct a 90-day review to determine whether the product relates to one of the prohibited activity.

Jurisdiction

The final rules authorize the Commission to toll the product certification or approval review period for novel derivative products that have elements of both a security and a derivative pending the issuance of a final determination order as to whether the Commission or the SEC has jurisdiction over the product.