



Commodity Futures Trading Commission

Office of Public Affairs

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Part 40 Q & A

What is the goal of the proposed rulemaking?

This notice of proposed rulemaking implements the Dodd-Frank Act's new statutory framework for certification and approval of new products, rules, and rule amendments submitted to the Commission by registered entities. The proposed rules also prohibit the listing or clearing of event contracts based on certain excluded commodities, establish special procedures for certain rule changes proposed by systematically important derivatives clearing organizations, and provide for the tolling of review periods pending the resolution of jurisdictional questions raised by either the SEC or the CFTC.

Which registered entities must comply with Part 40 of the Commission's regulations?

The proposed regulations apply to current registered entities (designated contract markets and derivatives clearing organizations), as well as new registered entities (swap execution facilities and swap data repositories).

What are the new rule certification procedures proposed under the Dodd-Frank Act?

The following proposed certification procedures will codify the applicable provisions of the Dodd-Frank Act:

- Registered entities must submit self-certifications at least ten business days before the effective date of the rule or rule amendment. A new rule or rule amendment will become effective ten business days after the certified rule or rule amendment is received by the Commission, unless the Commission notifies the registered entity that it is staying the certification.
- The certification may be stayed if the Commission determines that the new rule or rule amendment (1) presents novel or complex issues, (2) is certified with an inadequate explanation, or (3) is potentially inconsistent with the Act or Commission regulations.
- Once the Commission issues a notification of stay to the registered entity, the Commission will have 90 days to conduct a review of the submission. The Commission must provide a 30-day public comment period, within the 90-day review period. Notice of the comment period will be posted on the Commission's website.
- The submitted rule or rule amendment will become effective upon expiration of the 90-day review period unless the Commission objects to the certification.

How will the proposed rules affect the product certification and approval procedures currently in effect?

The procedures for submitting new products will remain largely unchanged. However, to facilitate and expedite the Commission's review of new products, the proposed rule makes three technical amendments.

- First, the proposed rules require registered entities to supplement product submissions with documentation substantiating their certification of compliance with the Act and Commission regulations.

- Second, the proposed rules require registered entities to certify that they have undertaken a due diligence review of contract terms and conditions. The Commission would like to confirm, for example, that registered entities account for legal conditions or constraints that may materially impact trading of the product.
- Third, to ensure prompt notice to market participants and to increase transparency, the proposed rules require registered entities to certify that copies of their product submissions are posted on their websites at the time of the filing.

How will the proposed rules affect the rule approval procedures currently in effect?

The procedures for submitting a new rule or rule amendment for prior approval will remain largely unchanged. However, Commission proposes two amendments:

- To ensure prompt notice to market participants and to increase transparency, the proposed rule requires registered entities to certify that copies of their rule submissions are posted on their websites at the time of the filing.
- In addition, the Commission proposes to codify applicable provisions of Section 745 of the Dodd-Frank Act, which establishes a new standard for the review of new rules or rule amendments. The Commission must approve a new rule or rule amendment unless the rule or rule amendment is inconsistent with the Act or Commission regulations.

What are the special certification procedures for systemically important derivatives clearing organizations?

The Commission proposes to require systemically important derivatives clearing organizations (“SIDCOs”) to provide 60-day advance notice of any proposed changes to rules, procedures or operations that could “materially affect the nature or level of risks” presented by the SIDCO.

- The notice must to describe (1) the nature of the rule change, (2) the expected effects on risks to the SIDCO, its clearing members, and the market, and (3) how the SIDCO plans to manage expected risks.
- The Commission may object to a proposed rule or rule amendment at any time within the 60-day notice and review period if the submission is not consistent with the Act or Commission regulations.
- If a SIDCO determines that a proposed rule is not material and therefore does not file an advance notice—but the Commission determines that the change is material—the Commission may require the SIDCO to withdraw the proposed change and to resubmit the rule with 60-day advance notice to the Commission.
- The Commission may extend the review period for an additional 60 days if the proposed change raises novel or complex issues.

Which proposed changes to rules, procedures, or operations “materially affect the nature or level of risks” presented by the SIDCO?

The Commission will determine whether a particular change to a rule, procedure, or operation is “material” on a case-by-case basis. Generally, any rule change that the SIDCO expects to substantially affect the performance of clearing or settlement functions or the overall nature or level of risk presented by the SIDCO may be “material.” These rules may affect, for example, financial resources, participant and product eligibility, risk management, settlement or procedures, default procedures, disaster recovery, or governance.

Are all event contracts prohibited under the proposed regulations?

No. Pursuant to Section 745(b) of the Dodd-Frank Act, the Commission proposes to prohibit the listing, trading, or clearing of certain products that are based on excluded commodities and that involve terrorism, assassination, war, gaming, or an

activity that is unlawful under any State or Federal law. In addition, the Commission proposes to prohibit the listing, trading, or clearing of products involving activities similar to those enumerated above and that the Commission determines, in a future rulemaking, to be contrary to the public interest.

However, if the Commission determines that a submitted product involves—or may involve—one of the enumerated activities above, 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 violates the prohibitions on certain event contracts. Upon completion of its review, the Commission will issue a determination order.

Will the review period for a novel derivative product submission be tolled upon a request for a jurisdictional determination by the SEC or the CFTC?

Yes. Under Section 718(a) of the Dodd-Frank Act, a registered entity certifying, submitting for approval, or otherwise filing a proposal to list a product having elements of both a security and a derivative may provide notice of its proposal both to the Commission and the SEC. However, if a registered entity chooses not to provide such notice and submits a novel product to the Commission having elements of both a security and a derivative, then the Commission will notify the SEC of the submission and accompany such notice with a copy of the registered entity's complete filing.

If the Commission or the SEC requests a jurisdictional determination from the other, the Commission will toll the applicable product certification or approval review period until the issuance of a final determination order. If the Commission or the SEC seeks judicial review of the jurisdictional determination, the proposed rule will stay the challenged order, as well as the review period for the product, until the United States Court of Appeals for the District of Columbia Circuit issues a final determination, or until there is resolution of an appeal of that determination. The submission review period will resume only upon a finding that the Commission has jurisdiction over the submission.