its discretion, upon request by the designated contract market.

(g) Delegation of authority. (1) The Commission hereby delegates, until it orders otherwise, the authority to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, to:

(i) Determine whether a particular financial resource under paragraph (b)(2) may be used to satisfy the requirements of paragraph (a)(1) and (2) of this section;

(ii) Review and make changes to the methodology used to compute the requirements of paragraph (c) of this section;

(iii) Request financial reporting from a designated contract market (in addition to quarterly reports) under paragraph (f)(1) of this section; and

(iv) Grant an extension of time for a designated contract market to file its quarterly financial report under paragraph (f)(4) of this section.

(2) The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

Subpart W—Diversity of Board of Directors

Source: 77 FR 36700, June 19, 2012, unless otherwise noted.

§ 38.1150 Core Principle 22.

The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

Subpart X—Securities and Exchange Commission

Source: 77 FR 36700, June 19, 2012, unless otherwise noted.

§ 38.1200 Core Principle 23.

The board of trade shall keep any such records relating to swaps defined in section 1a(47)(A)(v) of the Act open to inspection and examination by the Securities and Exchange Commission.

§ 38.1201 Additional sources for compliance.

Applicants and designated contract markets may refer to the guidance and/or acceptable practices in appendix B of this part to demonstrate to the Commission compliance with the requirements of §38.1200 of this part.

Appendix A to Part 38—Form DCM
Commodity Futures Trading Commission

Appendix A to Part 38 – Form DCM

COMMODITY FUTURES TRADING COMMISSION

FORM DCM

CONTRACT MARKET
APPLICATION OR AMENDMENT TO APPLICATION FOR DESIGNATION

DESIGNATION INSTRUCTIONS

Intentional misstatements or omissions of material fact may constitute federal criminal violations (15 U.S.C. §§ 78ff and 18 U.S.C. §§ 1013) or grounds for disqualification from designation.

DEFINITIONS

Unless the context requires otherwise, all terms used in this Form DCM have the same meaning as in the Commodity Exchange Act, as amended (“CEA” or “Act”), and in the General Rules and Regulations of the Commodity Futures Trading Commission (“Commission”) thereunder.

For the purposes of this Form DCM, the term “Applicant” shall include any board of trade applying for designation as a contract market, any board of trade amending a pending application, or any designated contract market that is applying for an amendment to its order of designation.

GENERAL INSTRUCTIONS

1. This Form DCM, which includes instructions, a Cover Sheet, and required Exhibits (together, “Form DCM”) is to be filed with the Commission by all Applicants, pursuant to Section 5 of the CEA and the Commission’s regulations thereunder. Applicants may prepare their own Form DCM but must follow the format prescribed herein. Upon the filing of an application for designation or a designation amendment in accordance with the instructions provided herein, the Commission will publish notice of the filing and afford interested persons an opportunity to submit written data, views and arguments concerning such application. No application for designation or designation amendment shall be effective unless the Commission, by order, grants such designation or amended designation.

2. Individuals’ names, except the executing signature, shall be given in full (Last Name, First Name, Middle Name).

3. Signatures on all copies of the Form DCM filed with the Commission can be executed electronically. If this Form DCM is filed by a corporation, it shall be signed in the name of the corporation by a principal officer duly authorized; if filed by a limited liability company, it shall be signed in the name of the limited liability company by a manager or member duly authorized to sign on the limited liability company’s behalf; if filed by a partnership, it shall be signed in the name of the partnership by a general partner duly authorized; if filed by an unincorporated organization or association which is not a partnership, it shall be signed in the name of such organization or association by the managing agent, i.e., a duly authorized person who directs or manages or who participates in the direction or managing of its affairs.

4. If this Form DCM is being filed as an application for designation, all applicable items must be answered in full. If any item is inapplicable, indicate by “none,” “not applicable,” or “N/A,” as appropriate.

5. Under Section 5 of the CEA and the Commission’s regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this Form DCM from any Applicant seeking designation as a contract market and from any designated contract market. Disclosure by the Applicant of the information specified on this Form DCM is mandatory prior to the start of the processing of an
application for, or an amendment to, designation as a contract market. The information provided in this Form DCM will be used for the principal purpose of determining whether the Commission should grant or deny designation to an Applicant. The Commission may determine that additional information is required from the Applicant in order to process its application. A Form DCM which is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Form DCM, however, shall not constitute a finding that the Form DCM has been filed as required or that the information submitted is true, current, or complete.

6. Except in cases where confidential treatment is requested by the Applicant and granted by the Commission pursuant to the Freedom of Information Act and the rules of the Commission thereunder, information supplied on this Form DCM will be included routinely in the public files of the Commission and will be available for inspection by any interested person.

APPLICATION AMENDMENTS

1. Part 38 of the Commission’s regulations requires that if any information contained in this application, or any supplement or amendment thereto, is or becomes inaccurate for any reason, an amendment to Form DCM, or a submission under Part 40 of the Commission’s regulations, in either case correcting such information must be filed promptly with the Commission.

2. Applicants, when filing this Form DCM for purposes of amending an application, must re-file the Cover Sheet, amended if necessary and including an executing signature, and attach thereto revised Exhibits or other materials marked to show changes, as applicable. The submission of an amendment represents that the remaining items and Exhibits that are not amended remain true, current, and complete as previously filed.

WHERE TO FILE

This Form DCM must be filed electronically with the Secretary of the Commission in a format specified by the Secretary of the Commission.

COMMODITY FUTURES TRADING COMMISSION

FORM DCM

CONTRACT MARKET
APPLICATION OR AMENDMENT TO APPLICATION FOR DESIGNATION

COVER SHEET

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Exact name of Applicant as specified in charter

Address of principal executive offices

☐ If this is an APPLICATION for designation, complete in full and check here.
If this is an AMENDMENT to an application, or to an existing designation, list all items that are amended and check here.

GENERAL INFORMATION

1. Name under which the business of the designated contract market is or will be conducted, if different than name specified above (include acronyms, if any):

2. If name of designated contract market is being amended, state previous designated contract market name:

3. Contact information, including mailing address if different than address specified above:

   Number and Street

   City   State   Country   Zip Code

   Main Phone number   Fax

   Website URL   E-mail Address

4. List of principal office(s) and address(es) where designated contract market activities are/will be conducted:

   Office   Address

   __________________________________________________________
   __________________________________________________________
   __________________________________________________________

5. If Applicant is a successor to a previously designated contract market, please complete the following:

   a. Date of succession

   __________________________________________________________

   b. Full name and address of predecessor designee

      Name

      __________________________________________________________

      Number and Street
BUSINESS ORGANIZATION

6. Applicant is a:

☐ Corporation
☐ Partnership
☐ Limited Liability Company
☐ Other form of organization (specify_)

7. Date of incorporation or formation:

8. State of incorporation or jurisdiction of organization:

9. Applicant agrees and consents that the notice of any proceeding before the Commission in connection with this application may be given by sending such notice by certified mail to the person named below at the address given.

Print Name and Title

Name of Applicant

Number and Street

City State Zip Code

SIGNATURES

10. The Applicant has duly caused this application or amendment to be signed on its behalf by the undersigned, hereunto duly authorized, this __________ day of __________, 20___. The Applicant and the undersigned represent hereby that all information contained herein is true, current, and complete. It is understood that all required items and Exhibits are considered integral parts of this Form DCM and that the submission of any amendment represents that all un-amended items and Exhibits remain true, current, and complete as previously filed.

Name of Applicant

Signature of Duly Authorized Person

Print Name and Title of Signatory
Commodity Futures Trading Commission

COMMODITY FUTURES TRADING COMMISSION

FORM DCM

APPLICATION OR AMENDMENT TO APPLICATION FOR DESIGNATION

EXHIBITS INSTRUCTIONS

The following Exhibits must be filed with the Commission by each Applicant applying for designation as a contract market, or by a designated contract market amending its designation, pursuant to Section 5 of the CEA and the Commission’s regulations thereunder. The Exhibits must be labeled according to the items specified in this Form DCM.

The application must include a Table of Contents listing each Exhibit required by this Form DCM and indicating which, if any, Exhibits are inapplicable. For any Exhibit that is inapplicable, next to the Exhibit letter specify “none,” “not applicable,” or “N/A,” as appropriate.

LIST OF EXHIBITS

EXHIBITS – BUSINESS ORGANIZATION

1. Attach as Exhibit A, the name of any person(s) who own(s) ten percent (10%) or more of the Applicant’s stock or who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of Applicant.

   Provide as part of Exhibit A the full name and address of each such person and attach a copy of the agreement or, if there is none written, describe the agreement or basis upon which such person exercises or may exercise such control or direction.

2. Attach as Exhibit B, a list of the present officers, directors, governors and the officers and governors of each corporation, partnership, or other applicable organization, of the Applicant that is not a corporation, the members of which standing committees of the organization, or persons performing functions similar to any of the foregoing, of the designated contract market or of any entity that performs the regulatory activities of the Applicant, indicating for each:

   1. Name
   2. Title
   3. Dates of commencement and termination of present term of office or position
   4. Length of time each present officer, director, or governor has held the same office or position
   5. Brief account of the business experience of each officer and director over the last five (5) years
   6. Any other business affiliations in the derivatives and securities industry
   7. For directors, list any committees on which they serve and any compensation received by virtue of their directorship
   8. A description of:
      (1) Any order of the Commission with respect to such person pursuant to Section 5e of the CEA;
      (2) Any conviction or injunction against such person within the past ten (10) years;
      (3) Any disciplinary action with respect to such person within the last five (5) years;
      (4) Any disqualification under Sections 5b and 8d of the CEA;
      (5) Any disciplinary action under Section 8c of the CEA; and
      (6) Any violation pursuant to Section 9 of the CEA.

3. Attach as Exhibit C, a narrative that sets forth the fitness standards for the Board of Directors and its composition including the number and percentage of public directors.
4. Attach as Exhibit D, a narrative or graphic description of the organizational structure of the Applicant. Include a list of all affiliates of the Applicant and indicate the general nature of the affiliation. Note: If the designated contract market activities of the Applicant are or will be conducted primarily by a division, subdivision, or other separate entity, corporation or organization, describe the relationship of such entity within the overall organizational structure and attach as Exhibit D a description only as it applies to the division, subdivision or separate entity, as applicable. Additionally, provide any relevant jurisdictional information, including any and all jurisdictions in which you or any affiliated entity are doing business, and registration status, including pending applications (e.g., country, regulator, registration category, date of registration). Provide the address for legal service of process for each jurisdiction, which cannot be a post office box.

5. Attach as Exhibit E, a description of the personnel qualifications for each category of professional employees employed by the Applicant or the division, subdivision, or other separate entity within the Applicant as described in Item 4.

6. Attach as Exhibit F, an analysis of staffing requirements necessary to carry out operations of the Applicant as a designated contract market and the name and qualifications of each key staff person.

7. Attach as Exhibit G, a copy of the constitution, articles of incorporation, formation or association with all amendments thereto, partnership or limited liability agreements, and existing by-laws, operating agreement, rules or instruments corresponding thereto, of the Applicant. Include any additional governance fitness information not included in Exhibit C. Provide a certificate of good standing dated within one week of the date of this Form DCM.

8. Attach as Exhibit H, a brief description of any material pending legal proceeding(s), other than ordinary and routine litigation incidental to the business, to which the Applicant or any of its affiliates is a party or to which any of its or their property is the subject. Include the name of the court or agency where the proceeding(s) are pending, the date(s) instituted, the principal parties involved, a description of the factual basis alleged to underlie the proceeding(s), and the relief sought. Include similar information as to any proceeding(s) known to be contemplated by the governmental agencies.

EXHIBITS — FINANCIAL INFORMATION

9. Attach as Exhibit I:
   1. (i) Balance sheet, (ii) Statement of income and expenses, (iii) Statement of cash flows, and (iv) Statement of sources and application of revenues and all notes or schedules thereto, as of the most recent fiscal year of the Applicant, or of its parent company, if applicable. If a balance sheet and any statement(s) certified by an independent public accountant are available, that balance sheet and statement(s) should be submitted as Exhibit I.
   2. Provide a narrative of how the value of the financial resources of the Applicant is at least equal to a total amount that would enable the Applicant to cover its operating costs for a period of at least one year, calculated on a rolling basis, and whether such financial resources include unencumbered, liquid financial assets (i.e. cash and/or highly liquid securities) equal to at least six months’ operating costs.
   3. Attach copies of any agreements establishing or amending a credit facility, insurance coverage, or other arrangement evidencing or otherwise supporting the Applicant’s conclusions regarding the liquidity of its financial assets.
   4. Representations regarding sources and estimates for future ongoing operational resources.

10. Attach as Exhibit J, a balance sheet and an income and expense statement for each affiliate of the designated contract market that also engages in designated contract market activities as of the end of the most recent fiscal year of each such affiliate, and each affiliate of the designated contract market that engages in swap execution facility activities.

11. Attach as Exhibit K, the following:
Commodity Futures Trading Commission

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1. A complete list of all dues, fees and other charges imposed, or to be imposed, by or on behalf of Applicant for its designated contract market services that are provided on an exclusive basis and identify the service or services provided for each such due, fee, or other charge.

2. A description of the basis and methods used in determining the level and structure of the dues, fees and other charges listed in paragraph (a) of this item.

3. If the Applicant differentiates, or proposes to differentiate, among its customers, or classes of customers in the amount of any dues, fees, or other charges imposed for the same or similar exclusive services, so state and indicate the amount of each differential. In addition, identify and describe any differences in the cost of providing such services, and any other factors, that account for such differentiations.

EXHIBITS — COMPLIANCE

12. Attach as Exhibit L, a narrative and any other form of documentation that may be provided under other Exhibits herein that describe the manner in which the Applicant is able to comply with each core principle. Such documentation must include a regulatory compliance chart setting forth each core principle and providing citations to the Applicant’s relevant rules, policies, and procedures that address each core principle. To the extent that the application raises issues that are novel, or for which compliance with a core principle is not self-evident, include an explanation of how that item and the application satisfy the core principles. Applicant must include a description of how it meets the definition of “Board of Trade” as defined in §1a(2) of the CEA.

13. Attach as Exhibit M, a copy of the Applicant’s rules (as defined in § 40.1 of the Commission’s regulations) and any technical manuals, other guides or instructions for users of, or participants in, the market, including minimum financial standards for members or market participants. Include rules citing applicable federal position limits and aggregation standards in Part 150 or 151, as applicable, of the Commission’s regulations and any exchange set position limit rules. Include rules on publication of daily trading information with regards to the requirements of Part 16 of the Commission’s regulations. The Applicant should include an explanation, and any other forms of documentation the Applicant thinks will be helpful to its explanation, demonstrating how its rules, technical manuals, other guides or instructions for users of, or participants in, the market, or minimum financial standards for members or market participants as provided in this Exhibit M help support the designated contract market’s compliance with the core principles.

14. Attach as Exhibit N, executed or executable copies of any agreements or contracts entered into or to be entered into by the Applicant, including third party regulatory service provider or member or user agreements that enable or empower the Applicant to comply with applicable core principles. Identify: (1) the services that will be provided; and (2) the core principles addressed by such agreement.

15. Attach as Exhibit O, a copy of any compliance manual, and any other documents, that describe with specificity the manner in which the Applicant will conduct trade practice, market and financial surveillance.

16. Attach as Exhibit P, a description of the Applicant’s disciplinary and enforcement protocols, tools, and procedures and the arrangements for alternative dispute resolution.

17. Attach as Exhibit Q, a description of the Applicant’s trading system and trade matching algorithm, and examples of how that algorithm works in various trading scenarios involving various types of orders.

18. Attach as Exhibit R, a list of rules prohibiting specific trade practice violations.

19. Attach as Exhibit S, a discussion of how trading data will be maintained by the designated contract market.
APPENDIX B TO PART 38—GUIDANCE ON, AND ACCEPTABLE PRACTICES IN, COMPLIANCE WITH CORE PRINCIPLES

1. This appendix provides guidance on complying with core principles, both initially and on an ongoing basis, to obtain and maintain designation under section 5(d) of the Act and this part 38. Where provided, guidance is set forth in paragraph (a) following the relevant heading and can be used to demonstrate to the Commission compliance with the selected requirements of a core principle, under §§ 38.3 and 38.5 of this part. The guidance for the core principle is illustrative only of the types of matters a designated contract market may address, as applicable, and is not intended to be used as a mandatory checklist. Addressing the issues set forth in this appendix would help the Commission in its consideration of whether the designated contract market is in compliance with the selected requirements of a core principle; provided however, that the guidance is not intended to diminish or replace, in any event, the obligations and requirements of applicants and designated contract markets to comply with the regulations provided under this part.

2. Where provided, acceptable practices meeting selected requirements of core principles are set forth in paragraph (b) following guidance. Designated contract markets that follow specific practices outlined in the acceptable practices for a core principle in this appendix will meet the selected requirements of the applicable core principle; provided however, that the acceptable practice is not intended to diminish or replace, in any event, the obligations and requirements of applicants and designated contract markets to comply with the regulations provided under this part 38. The acceptable practices are for illustrative purposes only and do not state the exclusive means for satisfying a core principle.

Core Principle 1 of section 5(d) of the Act:
DESIGNATION AS CONTRACT MARKET.—
(A) IN GENERAL.—To be designated, and maintain a designation, as a contract market, a board of trade shall comply with—
(i) Any core principle described in this subsection; and
(ii) Any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).
(B) REASONABLE DISCRETION OF CONTRACT MARKET.—Unless otherwise determined by the Commission by rule or regulation, a board of trade described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles described in this subsection.

(a) Guidance. [Reserved]
(b) Acceptable Practices. [Reserved]

Core Principle 2 of section 5(d) of the Act:
COMPLIANCE WITH RULES.—(A) IN GENERAL.—The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including—
(i) Access requirements;
(ii) The terms and conditions of any contracts to be traded on the contract market; and
(iii) Rules prohibiting abusive trade practices on the contract market.
(B) CAPACITY OF CONTRACT MARKET.—The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the contract market.
(C) REQUIREMENT OF RULES.—The rules of the contract market shall provide the board of trade with the ability and authority to obtain any necessary information to perform any function described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.
Commodity Futures Trading Commission

(a) Guidance—(1) Investigations and investigation reports—Warning letters. The rules of a designated contract market may authorize compliance staff to issue a warning letter to a person or entity under investigation to recommend that a disciplinary panel take such an action.

(2) Additional rules required. A designated contract market should adopt and enforce any additional rules that it believes are necessary to comply with the requirements of subpart C of this chapter.

(b) Acceptable Practices. [Reserved]

Core Principle 3 of section 5(d) of the Act: CONTRACTS NOT READILY SUBJECT TO MANIPULATION.—The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

(a) Guidance. (1) Designated contract markets may list new products for trading by self-certification under §40.2 of this chapter or may submit products for Commission approval under §40.3 of this chapter.

(2) Guidance in appendix C to this part may be used as guidance in meeting this core principle for both new products listings and existing listed contracts.

(b) Acceptable Practices. [Reserved]

Core Principle 4 of section 5(d) of the Act: PREVENTION OF MARKET DISRUPTION.—The board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including—

(A) Methods for conducting real-time monitoring of trading; and

(B) Comprehensive and accurate trade reconstructions.

(a) Guidance. The detection and prevention of market manipulation, disruptions, and distortions should be incorporated into the design of programs for monitoring trading activity. Monitoring of intraday trading should include the capacity to detect developing market anomalies, including abnormal price movements and unusual trading volumes, and position-limit violations. The designated contract market should have rules in place that allow it to intervene to prevent or reduce market disruptions. Once a threatened or actual disruption is detected, the designated contract market should take steps to prevent the disruption or reduce its severity.

(2) Additional rules required. A designated contract market should adopt and enforce any additional rules that it believes are necessary to comply with the requirements of subpart E of this part.

(b) Acceptable Practices—(1) General Requirements. Real-time monitoring for market anomalies and position-limit violations are the most effective, but the designated contract market may also demonstrate that it has an acceptable program if some of the monitoring is accomplished on a T+1 basis. An acceptable program must include automated trading alerts to detect market anomalies and position-limit violations as they develop and before market disruptions occur or become more serious. In some cases, a designated contract market may demonstrate that its manual processes are effective.

(2) Physical-delivery contracts. For physical-delivery contracts, the designated contract market must demonstrate that it is monitoring the adequacy and availability of the deliverable supply, which, if such information is available, includes the size and ownership of those supplies and whether such supplies are likely to be available to short traders and saleable by long traders at the market value of those supplies under normal cash marketing conditions. Further, for physical-delivery contracts, the designated contract market must continually monitor the appropriateness of a contract’s terms and conditions, including the delivery instrument, the delivery locations and location differentials, and the commodity characteristics and related differentials. The designated contract market must demonstrate that it is making a good-faith effort to resolve conditions that are interfering with convergence of its physical-delivery contract to the price of the underlying commodity or causing price distortions or market disruptions, including, when appropriate, changes to contract terms.

(3) Cash-settled contracts. At a minimum, an acceptable program for monitoring cash-settled contracts must include access, either directly or through an information-sharing agreement, to traders’ positions and transactions in the reference market for traders of a significant size in the designated contract market near the settlement of the contract.

(4) Ability to obtain information. With respect to the designated contract market’s ability to obtain information, a designated contract market may limit the application of the requirement to keep and provide such records only to those that are reportable under its large-trader reporting system or otherwise hold substantial positions.

(5) Risk controls for trading. An acceptable program for preventing market disruptions must demonstrate appropriate trade risk controls, in addition to pauses and halts. Such controls must be adapted to the unique characteristics of the markets to which they apply and must be designed to avoid market disruptions without unduly interfering with that market’s price discovery function. The designated contract market may choose from among controls that include: pre-trade limits on order size, price collars or bands around the current price, message throttles, and daily price limits, or design other types...
of controls. Within the specific array of controls that are selected, the designated contract market also must set the parameters for those controls, so long as the types of controls and their specific parameters are reasonably likely to serve the purpose of preventing market disruptions and price distortions. If a contract is linked to, or is a substitute for, other contracts, either listed on its market or on other trading venues, the designated contract market must, to the extent practicable, coordinate its risk controls with any similar controls placed on those other contracts. If a contract is based on the price of an equity security or the level of an equity index, such risk controls must, to the extent practicable, be coordinated with any similar controls placed on national security exchanges.

Core Principle 5 of section 5(d) of the Act: POSITION LIMITATIONS OR ACCOUNTABILITY. (A) IN GENERAL. — To reduce the potential threat of market manipulation or congestion (especially during trading in the delivery month), the board of trade shall adopt for each contract of the board of trade, as is necessary and appropriate, position limitations or position accountability for speculators.

(B) MAXIMUM ALLOWABLE POSITION LIMITATION. — For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the board of trade shall set the position limitation of the board of trade at a level not higher than the position limitation established by the Commission.

(a) Guidance. [Reserved]

(b) Acceptable Practices. [Reserved]

Core Principle 6 of section 5(d) of the Act: EMERGENCY AUTHORITY. — The board of trade, in consultation or cooperation with the Commission, shall adopt rules to provide for the exercise of emergency authority, as is necessary and appropriate, including the authority:

(A) To liquidate or transfer open positions in any contract;

(B) To suspend or curtail trading in any contract; and

(C) To require market participants in any contract to meet special margin requirements.

(a) Guidance. In consultation and cooperation with the Commission, a designated contract market should have the authority to intervene as necessary to maintain markets with fair and orderly trading and to prevent or address manipulation or disruptive trading practices, whether the need for intervention arises exclusively from the DCM’s market or as part of a coordinated, cross-market intervention. DCM rules should include procedures and guidelines to avoid conflicts of interest in accordance with the provisions of §40.9 of this chapter, and include alternate lines of communication and approval procedures to address emergencies associated with real-time events. To address perceived market threats, the designated contract market should have rules that allow it to take certain actions in the event of an emergency, as defined in §40.1(h) of this chapter, including: imposing or modifying position limits, price limits, and intraday market restrictions; imposing special margin requirements; ordering the liquidation or transfer of open positions in any contract; ordering the fixing of a settlement price; extending or shortening the expiration date or the trading hours; suspending or curtailing trading in any contract; transferring customer contracts and the margin or altering any contract’s settlement terms or conditions; and, where applicable, providing for the carrying out of such actions through its agreements with its third-party provider of clearing or regulatory services. In situations where a contract is fungible with a contract on another platform, emergency action to liquidate or transfer open interest must be as directed, or agreed to, by the Commission or the Commission’s staff. The DCM has the authority to independently respond to emergencies in an effective and timely manner consistent with the nature of the emergency, as long as all such actions taken by the DCM are made in good faith to protect the integrity of the markets. The Commission should be notified promptly of the DCM’s exercise of emergency action, explaining how conflicts of interest were minimized, including the extent to which the DCM considered the effect of its emergency action on the underlying markets and on markets that are linked or referenced to the contract market and similar markets on other trading venues. Information on all regulatory actions carried out pursuant to a DCM’s emergency authority should be included in a timely submission of a certified rule pursuant to part 40 of this chapter.

(b) Acceptable Practices. A designated contract market must have procedures and guidelines for decision-making and implementation of emergency intervention in the market. At a minimum, the DCM must have the authority to liquidate or transfer open positions in the market, suspend or curtail trading in any contract, and require market participants in any contract to meet special margin requirements. In situations where a contract is fungible with a contract on another platform, emergency action to liquidate or transfer open interest must be directed, or agreed to, by the Commission or the Commission’s staff. The DCM must promptly notify the Commission of the exercise of its emergency authority, documenting its decision-making process, including how conflicts of interest were minimized, and the reasons for using its emergency authority. The DCM must also have rules that allow it to take such market actions as may be directed by the Commission.
Core Principle 7 of section 5(d) of the Act: AVAILABILITY OF GENERAL INFORMATION.—The board of trade shall make available to market authorities, market participants, and the public accurate information concerning—

(A) The terms and conditions of the contracts of the contract market; and
(B) (i) The rules, regulations, and mechanisms for executing transactions on or through the facilities of the contract market; and
(ii) The rules and specifications describing the operation of the contract market’s—
(I) Electronic matching platform; or
(II) Trade execution facility.
(a) Guidance. [Reserved]
(b) Acceptable Practices. [Reserved]

Core Principle 8 of section 5(d) of the Act: EXECUTION OF TRANSACTIONS.—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

(a) Guidance. [Reserved]
(b) Acceptable Practices. [Reserved]

Core Principle 9 of section 5(d) of the Act: EXECUTION OF TRANSACTIONS.—(A) IN GENERAL.—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade.

(B) RULES.—The rules of the board of trade may authorize, for bona fide business purposes—
(i) Transfer trades or office trades;
(ii) An exchange of—
(I) Futures in connection with a cash commodity transaction;
(II) Futures for cash commodities; or
(III) Futures for swaps; or
(iii) A futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

(a) Guidance. [Reserved]
(b) Acceptable Practices. [Reserved]

Core Principle 10 of section 5(d) of the Act: TRADE INFORMATION.—The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information—
(A) To assist in the prevention of customer and market abuses; and
(B) To provide evidence of any violations of the rules of the contract market.

(a) Guidance. [Reserved]
(b) Acceptable Practices. [Reserved]
such sanction within the period of time, which shall be stated in the notice;

(iii) The rules of a designated contract market may provide that if a respondent fails to accept a sanction within the period of time stated in the notice, the respondent will be deemed to have accepted the sanction.

(3) Settlement offers. (i) The rules of a designated contract market may permit a respondent to submit a written offer of settlement at any time after an investigation report is completed. The disciplinary panel presiding over the matter may accept the offer of settlement, but may not alter the terms of a settlement offer unless the respondent agrees.

(ii) The rules of a designated contract market may provide that, in its discretion, a disciplinary panel may permit the respondent to accept a sanction without either admitting or denying the rule violations upon which the sanction is based.

(iii) If an offer of settlement is accepted, the panel accepting the offer shall issue a written decision specifying the rule violations it has reason to believe were committed, including the basis or reasons for the panel’s conclusions, and any sanction to be imposed, which should include full customer restitution where customer harm is demonstrated, except where the amount of restitution and to whom it should be provided cannot be reasonably determined. If an offer of settlement is accepted without the agreement of the enforcement staff, the decision should adequately support the disciplinary panel’s acceptance of the settlement. Where applicable, the decision should also include a statement that the respondent has accepted the sanctions imposed without either admitting or denying the rule violations.

(iv) The respondent may withdraw his or her offer of settlement at any time before final acceptance by a disciplinary panel. If an offer is withdrawn after submission, or is rejected by a disciplinary panel, the respondent should not be deemed to have made any admissions by reason of the offer of settlement and should not be otherwise prejudiced by having submitted the offer of settlement.

(4) Hearings. The rules of a designated contract market may provide that a sanction may be summarily imposed upon any person within its jurisdiction whose actions impede the progress of a hearing.

(5) Right to appeal. The rules of a designated contract market may permit the parties to a proceeding to appeal promptly an adverse decision of a disciplinary panel in all or in certain classes of cases. Such rules may require a party’s notice of appeal to be in writing and to specify the findings, conclusions, or sanctions to which objection are taken. If the rules of a designated contract market permit appeals, then both the respondent and the enforcement staff should have the opportunity to appeal and the designated contract market should provide for the following:

(i) The designated contract market should establish an appellate panel that shall be authorized to hear appeals of respondents. In addition, the rules of a designated contract market may provide that the appellate panel may, on its own initiative, order review of a decision by a disciplinary panel within a reasonable period of time after the decision has been rendered.

(ii) The composition of the appellate panel should be consistent with the requirements set forth in part 40 of this chapter and paragraph (4) of the acceptable practices for Core Principle 16, and should not include any members of the designated contract market’s compliance staff, or any person involved in adjudicating any other stage of the same proceeding. The rules of a designated contract market should provide for the appeal proceeding to be conducted before all of the members of the appellate panel or a panel thereof.

(iii) Except for good cause shown, the appeal or review should be conducted solely on the record before the disciplinary panel, the written exceptions filed by the parties, and the oral or written arguments of the parties.

(iv) Promptly following the appeal or review proceeding, the appellate panel should issue a written decision and should provide a copy to the respondent. The decision issued by the appellate panel should adhere to all the requirements of §38.708 of this part, to the extent that a different conclusion is reached from that issued by the disciplinary panel.

(6) Summary fines for violations of rules regarding timely submission of records, decorum, or other similar activities. A designated contract market may adopt a summary fine schedule for violations of rules relating to the timely submission of accurate records required for clearing or verifying each day’s transactions, decorum, attire, or other similar activities. A designated contract market may permit its compliance staff, or a designated panel of contract market officials, to summarily impose minor sanctions against persons within the designated contract market’s jurisdiction for violating such rules. A designated contract market’s summary fine schedule may allow for warning letters to be issued for first-time violations or violators. If adopted, a summary fine schedule should provide for progressively larger fines for recurring violations.

(7) Emergency disciplinary actions. (1) A designated contract market may impose a sanction, including suspension, or take other emergency action against a person or entity subject to its jurisdiction upon a reasonable belief that such immediate action is necessary to protect the best interest of the marketplace.
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(i) Any emergency disciplinary action should be taken in accordance with a designated contract market’s procedures that provide for the following:

(A) If practicable, a respondent should be served with a notice before the action is taken, or otherwise at the earliest possible opportunity. The notice should state the action, briefly state the reasons for the action, and state the effective time and date, and the duration of the action.

(B) The respondent should have the right to be represented by legal counsel or any other representative of its choosing in all proceedings subsequent to the emergency action taken. The respondent should be given the opportunity for a hearing as soon as reasonably practicable and the hearing should be conducted before the disciplinary panel pursuant to the requirements of §38.707 of this part.

(C) Promptly following the hearing provided for in this rule, the designated contract market should render a written decision based upon the weight of the evidence contained in the record of the proceeding and should provide a copy to the respondent. The decision should include a description of the summary action taken; the reasons for the summary action; a summary of the evidence produced at the hearing; a statement of findings and conclusions; a determination that the summary action should be affirmed, modified, or reversed; and a declaration of the decision should include a description of the decision were its own, including providing for the appropriate enforcement of any award issued against a delinquent member.

(2) Voluntary Procedures. The use of dispute resolution procedures shall be voluntary for customers other than eligible contract participants as defined in section 1a(18) of the Dodd-Frank Act, and may permit counterclaims as provided in §166.5 of this chapter.

(3) Member-to-Member Procedures. If the designated contract market also provides procedures for the resolution of disputes that do not involve customers (i.e., member-to-member disputes), the procedures for resolving such disputes must be independent of and shall not interfere with or delay the resolution of customers’ claims or grievances.

(4) Delegation. A designated contract market may delegate to another self-regulatory organization or to a registered futures association its responsibility to provide for customer dispute resolution mechanisms, provided, however, that in the event of such delegation, the designated contract market shall in all respects treat any decision issued by such other organization or association with respect to such dispute as if the decision were its own, including providing for the appropriate enforcement of any award issued against a delinquent member.

Core Principle 15 of section 5(d) of the Act: GOVERNANCE FITNESS STANDARDS.—The board of trade shall establish and enforce rules regarding, and provide facilities for alternative dispute resolution procedures that are: appropriate to the nature of the market; fair and equitable; and available on a voluntary basis, either directly or through another self-regulatory organization, to customers that are non-eligible contract participants.

(a) Guidance. A designated contract market should provide customer dispute resolution procedures that are: appropriate to the nature of the market; fair and equitable; and available on a voluntary basis, either directly or through another self-regulatory organization, to customers that are non-eligible contract participants.

(i) Fair and equitable procedure. Every contract market should provide customer dispute resolution procedures that are fair and equitable. An acceptable customer dispute resolution mechanism would:

(B) The respondent should have the right to be represented by legal counsel at the commencement of the procedure, at the party’s own expense.

(ii) Provide each party with adequate notice of the claims presented against such party, an opportunity to be heard on all claims, defenses and permitted counterclaims, and an opportunity for a prompt hearing;

(iv) Authorize prompt, written, final settlement awards that are not subject to appeal within the designated contract market; and

(v) Notify the parties of the fees and costs that may be assessed.
in the facility and non-member market participants who are not intermediated and do not have these privileges, obligations, responsibilities or disciplinary authority could satisfy minimum fitness standards by meeting the standards that they must meet to qualify as a "market participant." Natural persons who directly or indirectly have greater than a ten percent ownership interest in a designated contract market should meet the fitness standards applicable to members with voting rights.

(2) The Commission believes that such standards should include providing the Commission with fitness information for such persons, whether registration information, certification to the fitness of such persons, an affidavit of such persons’ fitness by the contract market’s counsel or other information substantiating the fitness of such persons. If a contract market provides certification of the fitness of such a person, the Commission believes that such certification should be based on verified information that the person is fit to be in his or her position.

(b) Applicable Practices. [Reserved]

Core Principle 16 of section 5(d) of the Act: CONFLICTS OF INTEREST.—The board of trade shall establish and enforce rules—

(A) to minimize conflicts of interest in the decisionmaking process of the contract market; and

(B) to establish a process for resolving conflicts of interest described in subparagraph (A).

(a) Guidance. The means to address conflicts of interest in decisionmaking of a contract market should include methods to ascertain the presence of conflicts of interest and to make decisions in the event of such a conflict. In addition, the Commission believes that the contract market should provide for appropriate limitations on the use or disclosure of material non-public information gained through the performance of official duties by board members, committee members and contract market employees or gained through an ownership interest in the contract market.

(b) Acceptable Practices. All designated contract markets (“DCMs” or “contract markets”) bear special responsibility to regulate effectively, impartially, and with due consideration of the public interest, as provided for in section 3 of the Act. Under Core Principle 15, they are also required to minimize conflicts of interest in their decisionmaking processes. To comply with this Core Principle, contract markets should be particularly vigilant for such conflicts between and among any of their self-regulatory responsibilities, their commercial interests, and the several interests of their management, members, owners, customers and market participants, other industry participants, and other constituencies. Acceptable practices for minimizing conflicts of interest shall include the following elements:

(1) Board composition for contract markets

(i) At least thirty-five percent of the directors on a contract market’s board of directors shall be public directors; and

(ii) The executive committees (or similarly empowered bodies) shall be at least thirty-five percent public.

(2) Public director

(i) To qualify as a public director of a contract market, an individual must first be found, by the board of directors, on the record, to have no material relationship with the contract market. A “material relationship” is one that reasonably could affect the independent judgment or decisionmaking of the director.

(ii) In addition, a director shall be considered to have a “material relationship” with the contract market if any of the following circumstances exist:

(A) The director is an officer or employee of the contract market or an officer or employee of its affiliate. In this context, “affiliate” includes parents or subsidiaries of the contract market or entities that share a common parent with the contract market;

(B) The director is a member of the contract market, or an officer or director of a member. “Member” is defined according to section 1a(36) of the Commodity Exchange Act and Commission Regulation 1.30q;

(C) The director, or a firm with which the director is an officer, director, or partner, receives more than $100,000 in combined annual payments from the contract market, or any affiliate of the contract market (as defined in subsection (2)(ii)(A)), for legal, accounting, or consulting services. Compensation for services as a director of the contract market or as a director of an affiliate of the contract market does not count toward the $100,000 payment limit, nor does deferred compensation for services prior to becoming a director, so long as such compensation is in no way contingent, conditioned, or revocable;

(D) Any of the relationships above apply to a member of the director’s “immediate family,” i.e., spouse, parents, children and siblings;

(iii) All of the disqualifying circumstances described in subsection (2)(ii) shall be subject to a one-year look back.

(iv) A contract market’s public directors may also serve as directors of the contract market’s affiliate (as defined in subsection (2)(ii)(A)) if they otherwise meet the definition of public director in this section (2).

(v) A contract market shall disclose to the Commission which members of its board are public directors, and the basis for those determinations.

(3) Regulatory oversight committee
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(i) A board of directors of any contract market shall establish a Regulatory Oversight Committee (“ROC”) as a standing committee, consisting of only public directors as defined in section (2), to assist it in minimizing actual and potential conflicts of interest. The ROC shall oversee the contract market’s regulatory program on behalf of the board. The board shall delegate sufficient authority, dedicate sufficient resources, and allow sufficient time for the ROC to fulfill its mandate.

(ii) The ROC shall:
(A) Monitor the contract market’s regulatory program for sufficiency, effectiveness, and independence;
(B) Oversee all facets of the program, including trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to member firms (including ensuring compliance with financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations;
(C) Review the size and allocation of the regulatory budget and resources; and the number, hiring and termination, and compensation of regulatory personnel;
(D) Supervise the contract market’s chief regulatory officer, who will report directly to the ROC;
(E) Prepare an annual report assessing the contract market’s self-regulatory program for the board of directors and the Commission, which sets forth the regulatory program’s expenses, describes its staffing and structure, catalogues disciplinary actions taken during the year, and reviews the performance of disciplinary committees and panels;
(F) Recommend changes that would ensure fair, vigorous, and effective regulation; and
(G) Review regulatory proposals and advise the board as to whether and how such changes may impact regulation.

(4) Disciplinary panels

All contract markets shall minimize conflicts of interest in their disciplinary processes through disciplinary panel composition rules that preclude any group or class of industry participants from dominating or exercising disproportionate influence on such panels. Contract markets can further minimize conflicts of interest by including in all disciplinary panels at least one person who would qualify as a public director as defined in subsections (2)(ii) and (2)(iii) above.

Core Principle 17 of section 5(d) of the Act: COMPOSITION OF GOVERNING BOARDS OF CONTRACT MARKETS.—The governance arrangements of the board of trade shall be designed to permit consideration of the views of market participants.

(a) Guidance. [Reserved]
(b) Acceptable Practices. [Reserved]

Core Principle 18 of section 5(d) of the Act: RECORDKEEPING.—The board of trade shall maintain records of all activities relating to the business of the contract market—

(A) In a form and manner that is acceptable to the Commission; and
(B) For a period of at least 5 years.

(a) Guidance. [Reserved]
(b) Acceptable Practices. [Reserved]

Core Principle 19 of section 5(d) of the Act: ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall not—

(A) Adopt any rule or taking any action that results in any unreasonable restraint of trade; or
(B) Impose any material anticompetitive burden on trading on the contract market.

(a) Guidance. An entity seeking designation as a contract market may request that the Commission consider under the provisions of section 15(b) of the Act, any of the entity’s rules, including trading protocols or policies, and including both operational rules and the terms or conditions of products listed for trading, at the time of designation or thereafter. 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.

(b) Acceptable Practices. [Reserved]

Core Principle 20 of section 5(d) of the Act: SYSTEM SAFEGUARDS.—The board of trade shall—

(A) Establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;
(B) Establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the board of trade; and
(C) Periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

(a) Guidance. [Reserved]
(b) Acceptable Practices. [Reserved]
Core Principle 21 of section 5(d) of the Act: FINANCIAL RESOURCES.—
(A) IN GENERAL.—The board of trade shall have adequate financial, operational, and managerial resources to discharge each responsibility of the board of trade.
(B) DETERMINATION OF ADEQUACY.—The financial resources of the board of trade shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the contract market to cover the operating costs of the contract market for a 1-year period, calculated on a rolling basis.

(a) Guidance. [Reserved]
(b) Acceptable Practices. [Reserved]

Core Principle 22 of section 5(d) of the Act: DIVERSITY OF BOARD OF DIRECTORS.—The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

(a) Guidance. [Reserved]
(b) Acceptable Practices. [Reserved]

Core Principle 23 of section 5(d) of the Act: SECURITIES AND EXCHANGE COMMISSION.—The board of trade shall keep any such records relating to swaps defined in section 1a(47)(A)(v) open to inspection and examination by the Securities and Exchange Commission.

(a) Guidance. A designated contract market should have arrangements and resources for collecting and maintaining accurate records pertaining to any swaps agreements defined in section 1a(47)(A)(v) of the Act, and should leave them open to inspection and examination for a period of five years.
(b) Acceptable Practices. [Reserved]

[77 FR 36717, June 19, 2012]

APPENDIX C—DEMONSTRATION OF COMPLIANCE THAT A CONTRACT IS NOT READILY SUSCEPTIBLE TO MANIPULATION

(a) Futures Contracts—General Information. When a designated contract market certifies or submits for approval contract terms and conditions for a new futures contract, that submission should include the following information:

(1) A narrative describing the contract, including data and information to support the contract’s terms and conditions, as set by the designated contract market. When designing a futures contract, the designated contract market should conduct market research so that the contract design meets the risk management needs of prospective users and promotes price discovery of the underlying commodity. The designated contract market should consult with market users to obtain their views and opinions during the contract design process to ensure the contract’s terms and conditions reflect the underlying cash market and that the futures contract will perform the intended risk management and/or price discovery functions. A designated contract market should provide a statement indicating that it took such steps to ensure the usefulness of the submitted contract.

(2) A detailed cash market description for physical and cash-settled contracts. Such descriptions should be based on government and/or other publicly-available data whenever possible and be formulated for both the national and regional/local market relevant to the underlying commodity. For tangible commodities, the cash market descriptions for the relevant market (i.e., national and regional/local) should incorporate at least three full years of data that may include, among other factors, production, consumption, stocks, imports, exports, and prices. Each of those cash market variables should be fully defined and the data sources should be fully specified and documented to permit Commission staff to replicate the estimates of deliverable supply (defined in paragraph (b)(1)(A) of this appendix C). Whenever possible, the Commission requests that monthly or daily prices (depending on the contract) underlying the cash settlement index be submitted for the most recent three full calendar years and for as many of the current year’s months for which data are available. For contracts that are cash settled to an index, the index’s methodology should be provided along with supporting information showing how the index is reflective of the underlying cash market, is not readily subject to manipulation or distortion, and is based on a cash price series that is reliable, acceptable, publicly available and timely (defined in paragraphs (c)(2) and (c)(3) of this appendix C). The Commission recognizes that the data necessary for accurate and cogent cash market analyses for an underlying commodity vary with the nature of the underlying commodity. The Commission may require that the designated contract market submit a detailed report on commodity definitions and uses.

(b) Futures Contracts Settled by Physical Delivery. (1) For listed contracts that are settled by physical delivery, the terms and conditions of the contract should conform to the most common commercial practices and conditions in the cash market for the commodity underlying the futures contract. The terms and conditions should be designed to avoid any impediments to the delivery of the commodity so as to promote convergence between the price of the futures contract and the cash market value of the commodity at the expiration of a futures contract.

(i) Estimating Deliverable Supplies.
(A) General definition. The specified terms and conditions, considered as a whole, should result in a “deliverable supply” that is sufficient to ensure that the contract is not susceptible to price manipulation or distortion. In general, the term “deliverable supply” means the quantity of the commodity meeting the contract’s delivery specifications that can be expected to be readily available to short traders and salable by long traders at its market value in normal cash marketing channels at the contract’s delivery points during the specified delivery period, barring abnormal movement in inter-state commerce. Typically, deliverable supply reflects the quantity of the commodity that potentially could be made available for sale on a spot basis at current prices at the contract’s delivery points. For a non-financial physical-delivery commodity contract, this estimate might represent product which is in storage at the delivery point(s) specified in the futures contract or can be moved economically into or through such points consistent with the delivery procedures set forth in the contract and which is available for sale on a spot basis within the marketing channels that normally are tributary to the delivery point(s). Furthermore, an estimate of deliverable supply would not include supply that is committed for long-term agreements, or significant portion thereof, can be demonstrated by the designated contract market’s estimate of deliverable supply for that commodity. An adequate measure of deliverable supply that is committed for long-term agreements, or significant portion thereof, can be demonstrated by the designated contract market’s estimate of deliverable supply for that commodity. An adequate measure of deliverable supply would be an amount of the commodity that would meet the normal or expected range of delivery demand without causing futures prices to become distorted relative to cash market prices. Given the availability of acceptable data, deliverable supply should be estimated on a monthly basis for at least the most recent three years for which data are available. To the extent possible and that data resources permit, deliverable supply estimates should be constructed such that the data reflect, as close as possible, the market defined by the contract’s terms and conditions, and should be formulated, whenever possible, with government or publicly available data. All deliverable supply estimates should be fully defined, have all underlying assumptions explicitly stated, and have documentation of all data/information sources in order to permit estimate replication by Commission staff.

(B) Accounting for variations in deliverable supplies. To assure the availability of adequate deliverable supplies and acceptable levels of commercial risk management utility, contract terms and conditions should account for variations in the patterns of production, consumption and supply over a period of years of sufficient length to assess adequately the potential range of deliverable supplies. This assessment also should consider seasonality, growth, and market concentration in the production/consumption of the underlying cash commodity. Deliverable supply implications of seasonal effects are more straightforwardly delineated when deliverable supply estimates are calculated on a monthly basis and when such monthly estimates are provided for at least the most recent three years for which data resources permit. In addition, consideration should be given to the relative roles of producers, merchants, and consumers in the production, distribution, and consumption of the cash commodity and whether the underlying commodity exhibits a domestic or international export focus. Careful consideration also should be given to the quality of the cash commodity and to the movement or flow of the cash commodity in normal commercial channels and whether there exist external factors or regulatory controls that could affect the price or supply of the cash commodity.

(C) Calculation of deliverable supplies. Designated contract markets should derive a quantitative estimate of the deliverable supplies for the delivery period specified in the proposed contract. For commodities with seasonal supply or demand characteristics, the deliverable supply analysis should include that period when potential supplies typically are at their lowest levels. The estimate should be based on statistical data, when reasonably available, covering a period of time that is representative of the underlying commodity’s actual patterns of production, patterns of consumption, and patterns of seasonal effects (if relevant). Often, such a relevant time period should include at least three years of monthly deliverable supply estimates permitted by available data resources. Deliverable supply estimates should also exclude the amount of the commodity that would not be otherwise deliverable on the futures contract. For example, deliverable supplies should exclude quantities that at current price levels are not economically obtainable or deliverable or were previously committed for long-term agreements.

(2) Contract terms and conditions requirements for futures contracts settled by physical delivery.
(i) For physical delivery contracts, an acceptable specification of terms and conditions would include, but may not be limited to, rules that address, as appropriate, the following criteria and comply with the associated standards:

(A) Quality Standards. The terms and conditions of a commodity contract should describe or define all of the economically significant characteristics or attributes of the commodity underlying the contract. In particular, the quality standards should be described or defined so that such standards reflect those used in transactions in the commodity in normal cash marketing channels. Documentation establishing that the quality standards of the contract's underlying commodity comply with those accepted/established by the industry, by government regulations, and/or by relevant laws should also be submitted. For any particular commodity contract, the specific attributes that should be enumerated depend upon the individual characteristics of the underlying commodity. These may include, for example, the following items: grade, quality, purity, weight, class, origin, growth, issuer, originator, maturity window, coupon rate, source, hours of trading, etc. If the terms of the contract provide for the delivery of multiple qualities of a specific attribute of the commodity having different cash market values, then a "par" quality should be specified with price differentials applicable to the "non-par" qualities that reflect discounts or premiums commonly observed or expected to occur in the cash market for that commodity.

(B) Deliveries Points and Facilities. Delivery point/area specifications should provide for futures delivery at a single location or at multiple locations where the underlying cash commodity is normally transacted or stored and where there exists a viable cash market(s). If multiple delivery points are specified and the value of the commodity differs between these locations, contract terms should include price differentials that reflect usual differences in value between the different delivery locations. If the price relationships among the delivery points are unstable and a designated contract market chooses to adopt fixed locational price differentials, such differentials should fall within the range of commonly observed or expected commercial price differences. In this regard, any price differentials should be supported with cash price data for the delivery location(s). The terms and conditions of the contracts also should specify, as appropriate, any conditions the delivery facilities and/or delivery facility operators should meet in order to be eligible for delivery. Specification of any requirements for delivery facilities also should consider the extent to which ownership of such facilities is concentrated and whether the level of concentration would be susceptible to manipulation of the futures contract's prices. Commodity contracts also should specify appropriately detailed delivery procedures that describe the responsibilities of delivery receivers and any required third parties in carrying out the delivery process. Such responsibilities could include allocation between buyer and seller of all associated costs such as load-out, document preparation, sampling, grading, weighing, storage, taxes, duties, fees, drayage, stevedoring, demurrage, dispatch, etc. Required accreditation for third-parties also should be detailed. These procedures should seek to minimize or eliminate any impediments to making or taking delivery by both deliverers and takers of delivery to help ensure convergence of cash and futures at the expiration of a futures delivery month.

(C) Delivery Period and Last Trading Day. An acceptable specification of the delivery period would allow for sufficient time for deliverers to acquire the deliverable commodity and make it available for delivery, considering any restrictions or requirements imposed by the designated contract market. Specification of the last trading day for expiring contracts should consider whether adequate time remains after the last trading day to allow for delivery on the contract.

(D) Contract Size and Trading Unit. An acceptable specification of the delivery unit and/or trading unit would be a contract size that is consistent with customary transactions, transportation or storage amounts in the cash market (e.g., the contract size may be reflective of the amount of the commodity that represents a pipeline, truckload or railcar shipment). For purposes of increasing market liquidity, a designated contract market may elect to specify a contract size that is smaller than the typical commercial transaction size, storage unit or transportation size. In such cases, the commodity contract should include procedures that allow futures traders to easily take or make delivery on such a contract with a smaller size, or, alternatively, the designated contract market may adopt special provisions requiring that delivery be made only in multiple contracts to accommodate reselling the commodity in the cash market. If the latter provision is adopted, contract terms should be adopted to minimize the potential for default in the delivery process by ensuring that all contracts remaining open at the close of trading in expiring delivery months can be combined to meet the required delivery unit size. Generally, contract sizes and trading units should be determined after a careful analysis of relevant cash market trading practices, conditions and deliverable supply estimates, so as to ensure that the underlying market commodity market and available supply sources are able to support the contract sizes and trading units at all times.
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(E) Delivery Pack. The term “delivery pack” refers to the packaging standards (e.g., product may be delivered in burlap or polyethylene bags stacked on wooden pallets) and any quality related standards regarding the composition of commodity within a delivery unit (e.g., product must all be imported from the same country or origin). An acceptable specification of the delivery pack or composition of a contract’s delivery unit should reflect, to the extent possible, specifications commonly applied to the commodity traded or transacted in the cash market.

(F) Delivery Instrument. An acceptable specification of the delivery instrument (e.g., warehouse receipt, depository certificate or receipt, shipping certificate, bill of lading, in-line transfer, book transfer of securities, etc.) would provide for its conversion into the cash commodity at a commercially-reasonable cost. Transportation terms (e.g., FOB, CIF, freight prepaid to destination) as well as any limits on storage or certificate daily premium fees should be specified. These terms should reflect cash market practices and the customary practice for allocating delivery costs between buyer and seller.

(G) Inspection Provisions. Any inspection or certification procedures for verifying compliance with quality requirements or any other related delivery requirements (e.g., discounts relating to the age of the commodity, etc.) should be specified in the contract rules. An acceptable specification of inspection procedures would include the establishment of formal procedures that are consistent with procedures used in the cash market. To the extent that formal inspection procedures are not used in the cash market, an acceptable specification would contain provisions that assure accuracy in assessing the commodity, that are available at a low cost, that do not pose an obstacle to delivery on the contract and that are performed by a reputable, disinterested third party or by qualified designated contract market employees. Inspection terms also should detail which party pays for the service, particularly in light of the possibility of varying inspection results.

(H) Delivery (Trading) Months. Delivery months should be established based on the risk management needs of commercial entities as well as the availability of deliverable supplies in the specified months.

(I) Minimum Price Fluctuation (Minimum Tick). The minimum price increment (tick) should be set at a level that is equal to, or less than, the minimum price increment commonly observed in cash market transactions for the underlying commodity. Specifying a futures’ minimum tick that is greater than the minimum price increment in the cash market can undermine the risk management utility of the futures contract by preventing hedgers from efficiently establishing and liquidating futures positions that are used to hedge anticipated cash market transactions or cash market positions.

(J) Maximum Price Fluctuation Limits. Designated contract markets may adopt price limits to: (1) Reduce or constrain price movements in a trading day that may not be reflective of true market conditions but might be caused by traders overreacting to news; (2) Allow additional time for the collection of margins in times of large price movements; and (3) Provide a “cooling-off” period for futures market participants to respond to bona fide changes in market supply and demand fundamentals that would lead to large cash and futures price changes. If price limit provisions are adopted, the limits should be set at levels that are not overly restrictive in relation to price movements in the cash market for the commodity underlying the futures contract.

(K) Speculative Limits. Specific information regarding the establishment of speculative position limits is set forth in part 150, and/or part 151, as applicable, of the Commission’s regulations.

(L) Reportable Levels. Refer to §15.03 of the Commission’s regulations.

(M) Trading Hours. Should be set by the designated contract market to delineate each trading day.

(c) Futures Contracts Settled by Cash Settlement. (1) Cash settlement is a method of settling certain futures or option contracts whereby, at contract expiration, the contract is settled by cash payment in lieu of physical delivery of the commodity or instrument underlying the contract. An acceptable specification of the cash settlement price for commodity futures and option contracts would include rules that fully describe the essential economic characteristics of the underlying commodity (e.g., grade, quality, weight, class, growth, issuer, maturity, source, rating, description of the underlying index and index’s calculation methodology, etc.), as well as how the final settlement price is calculated. In addition, the rules should clearly specify the trading months and hours of trading, the last trading day, contract size, minimum price change (tick size) and any limitations on price movements (e.g., price limits or trading halts).

(2) Cash settled contracts may be susceptible to manipulation or price distortion. In evaluating the susceptibility of a cash-settled contract to manipulation, a designated contract market should consider the size and liquidity of the cash market that underlies the listed contract in a manner that follows the determination of deliverable supply as noted above in (b)(1). In particular, situations susceptible to manipulation include those in which the volume of cash market
transactions and/or the number of participants contacted in determining the cash-settlement price are very low. Cash-settled contracts may create an incentive to manipulate or artificially influence the data from which the cash-settlement price is derived or to exert undue influence on the cash-settlement price’s computation in order to profit on a futures position in that commodity. The utility of a cash-settled contract for risk management and price discovery would be significantly impaired if the cash settlement price is not a reliable or robust indicator of the value of the underlying commodity or instrument. Accordingly, careful consideration should be given to the potential for manipulation or distortion of the cash settlement price, as well as the reliability of that price as an indicator of cash market values. Appropriate consideration also should be given to the commercial acceptability, public availability, and timeliness of the price series that is used to calculate the cash settlement price. Documentation demonstrating that the settlement price index is a reliable indicator of market values and conditions and is commonly used as a reference index by industry/market agents should be provided. Such documentation may take on various forms, including carefully documented interview results with knowledgeable agents.

(ii) Where a designated contract market calculates the cash settlement price series, a designated contract market should consider the need for a licensing agreement that will ensure the designated contract market’s rights to the use of the price series to settle the listed contract.

(i) Where an independent, private-sector third party calculates the cash settlement price series, the designated contract market should verify that the third party utilizes business practices that minimize the opportunity or incentive to manipulate the cash-settlement price series. Such safeguards may include lock-downs, prohibitions against derivatives trading by employees, or public dissemination of the names of sources and the price quotes they provide. Because a cash-settled contract may create an incentive to manipulate or artificially influence the underlying market from which the cash-settlement price is derived or to exert undue influence on the cash-settlement computation in order to profit on a futures position in that commodity, a designated contract market should, whenever practicable, enter into an information-sharing agreement with the third-party provider which would enable the designated contract market to better detect and prevent manipulative behavior.

(ii) Where a designated contract market itself generates the cash settlement price series, the designated contract market should establish calculation procedures that safeguard against potential attempts to artificially influence the price. For example, if the cash settlement price is derived by the designated contract market based on a survey of cash market sources, the designated contract market should maintain a list of such entities which all should be reputable sources with knowledge of the cash market. In addition, the sample of sources polled should be representative of the cash market, and the poll should be conducted at a time when trading in the cash market is active.

(iii) The cash-settlement calculation should involve computational procedures that eliminate or reduce the impact of potentially unrepresentative data.

(iv) The cash settlement price should be an accurate and reliable indicator of prices in the underlying cash market. The cash settlement price also should be acceptable to commercial users of the commodity contract. The registered entity should fully document that the settlement price is accurate, reliable, highly regarded by industry/market agents, and fully reflects the economic and commercial conditions of the relevant designated contract market.

(v) To the extent possible, the cash settlement price should be based on cash price series that are publicly available and available on a timely basis for purposes of calculating the cash settlement price at the expiration of a commodity contract. A designated contract market should make the final cash settlement price and any other supporting information that is appropriate for release to the public, available to the public when cash settlement is accomplished by the derivatives clearing organization. If the cash settlement price is based on cash prices that are obtained from non-public sources (e.g., cash market surveys conducted by the designated contract market or by third parties on behalf of the designated contract market), a designated contract market should make available to the public as soon as possible after a contract month’s expiration the final cash settlement price as well as any other supporting information that is appropriate or feasible to make available to the public.

(4) Contract terms and conditions requirements for futures contracts settled by cash settlement.

(i) An acceptable specification of the terms and conditions of a cash-settled commodity contract will also set forth the trading months, last trading day, contract size, minimum price change (tick size) and daily price limits, if any.

(A) Commodity Characteristics: The terms and conditions of a commodity contract should describe the commodity underlying the contract.

(B) Contract Size and Trading Unit: An acceptable specification of the trading unit would be a contract size that is consistent with customary transactions in the cash market. A designated contract market may
opt to set the contract size smaller than that of standard cash market transactions.

(C) Cash Settlement Procedure: The cash settlement price should be reliable, acceptable, publicly available, and reported in a timely manner as described in paragraphs (c)(3)(iv) and (c)(3)(v) of this appendix C.

(D) Pricing Basis and Minimum Price Fluctuation (Minimum Tick): The minimum price increment (tick) should be set a level that is equal to, or less than, the minimum price increment commonly observed in cash market transactions for the underlying commodity. Specifying a futures’ minimum tick that is greater than the minimum price increment in the cash market can undermine the risk management utility of the futures contract by preventing hedgers from efficiently establishing and liquidating futures positions that are used to hedge anticipated cash market transactions or cash market positions.

(E) Maximum Price Fluctuation Limits: Designated contract markets may adopt price limits to: (1) Reduce or constrain price movements in a trading day that may not be reflective of true market conditions but might be caused by traders overreacting to news; (2) Allow additional time for the collection of margins in times of large price movements; and (3) Provide a “cooling-off” period for futures market participants to respond to bona fide changes in market supply and demand fundamentals that would lead to large cash and futures price changes. If price-limit provisions are adopted, the limits should be set at levels that are not overly restrictive in relation to price movements in the cash market for the commodity underlying the futures contract. For broad-based stock index futures contracts, rules should be adopted that coordinate with New York Stock Exchange ("NYSE") declared Circuit Breaker Trading Halts (or other market coordinated Circuit Breaker mechanism) and would recommence trading in the futures contract only after trading in the majority of the stocks underlying the index has recommenced.

(F) Last Trading Day: Specification of the last trading day for expiring contracts should be established such that it occurs before publication of the underlying third-party price index or determination of the final settlement price. If the designated contract market chooses to allow trading to occur through the determination of the final settlement price, then the designated contract market should show that futures trading would not distort the final settlement price calculation.

(G) Trading Months: Trading months should be established based on the risk management needs of commercial entities as well as the availability of price and other data needed to calculate the cash settlement price in the specified months. Specification of the last trading day should take into consideration whether the volume of transactions underlying the cash settlement price would be unduly limited by occurrence of holidays or traditional holiday periods in the cash market. Moreover, a contract should not be listed past the date for which the designated contract market has access to use a proprietary price index for cash settlement.

(H) Speculative Limits: Specific rules and policies for speculative position limits are set forth in part 150 and/or part 151, as applicable, of the Commission’s regulations.

(1) Reportable Levels: Refer to §15.03 of the Commission’s regulations.

(2) Option Expiration & Last Trading Day. (1) The Commission’s experience with the oversight of trading in futures option contracts indicates that most of the terms and conditions associated with such trading do not raise any regulatory concerns or issues. The Commission has found that the following terms do not affect an option contract’s susceptible to manipulation or its utility for risk management. Thus, the Commission believes that, in most cases, any specification of the following terms would be acceptable; the only requirement is that such terms be specified in an automatic and objective manner in the option contract’s rules:
- Exercise method;
- Exercise procedure (if positions in the underlying futures contract are established via book entry);
- Strike price listing provisions, including provisions for listing strike prices on a discretionary basis;
- Strike price intervals;
- Automatic exercise provisions;
- Contract size (unless not set equal to the size of the underlying futures contract); and
- Option minimum tick should be equal to or smaller than that of the underlying futures contract.

(2) Option Expiration & Last Trading Day. For options on futures contracts, specification of expiration dates should consider the relationship of the option expiration date to the delivery period for the underlying futures contract. In particular, an assessment should be made of liquidity in the underlying futures market to assure that any futures contracts acquired through exercise can be liquidated without adversely affecting the orderly liquidation of futures positions or increasing the underlying futures contract’s susceptibility to manipulation. When the underlying futures contract exhibits a very low trading activity during an expiring delivery month’s final trading days or has a greater risk of price manipulation than other contracts, the last trading day and expiration day of the option should occur prior to the delivery period or the settlement date of the underlying future. For example, the last
trading day and option expiration day might appropriately be established prior to first delivery notice day for option contracts with underlying futures contracts that have very limited delivery supplies. Similarly, if the futures contract underlying an option contract is cash settled using cash prices from a very limited number of underlying cash market transactions, the last trading and option expiration days for the option contract might appropriately be established prior to the last trading day for the futures contract.

(iii) Speculative Limits. In cases where the terms of an underlying futures contract specify a spot-month speculative position limit and the option contract expires during, or at the close of, the futures contract's delivery period, the option contract should include a spot-month speculative position limit provision that requires traders to combine their futures and option position and be subject to the limit established for the futures contract. Specific rules and policies for speculative position limits are set forth in part 150 and/or part 151, as applicable, of the Commission's regulations.

(iv) Options on Physicals Contracts.

(1) Under the Commission's regulations, the term “option on physicals” refers to option contracts that do not provide for exercise into an underlying futures contract. Upon exercise, options on physicals can be settled via physical delivery of the underlying commodity or by a cash payment. Thus, options on physicals raise many of the same issues associated with trading in futures contracts regarding adequacy of deliverable supplies or acceptability of the cash settlement price series. In this regard, an option that is cash settled based on the settlement price of a futures contract would be considered an “option on physicals” and the futures settlement price would be considered the cash price series.

(ii) In view of the above, acceptable practices for the terms and conditions of options on physicals contracts include, as appropriate, those practices set forth above for physical-delivery or cash-settled futures contracts plus the practices set forth for options on futures contracts.

(e) Security Futures Products. The listing of security futures products is governed by the special requirements of part 41 of the Commission's regulations.

(f) Non-Price Based Futures Contracts.

(1) Non-price based contracts are typically construed as binary options, but also may be designed to function similar to traditional futures or option contracts.

(2) Where the contract is settled to a third party cash-settlement series, the designated contract market should consider the nature and sources of the data comprising the cash-settlement calculation, the computational procedures, and the mechanisms in place to ensure the accuracy and reliability of the index value. The evaluation also considers the extent to which the third party has, or will adopt, safeguards against unauthorized or premature release of the index value itself or any key data used in deriving the index value.

(iii) The designated contract market should follow the guidance in paragraph (f)(4) (Contract Terms and Conditions Requirements for Futures Contracts Settled by Cash Settlement) of this appendix C to meet compliance.

(g) Swap Contracts. (1) In general, swap contracts are an agreement to exchange a series of cash flows over a period of time based on reference price indices. When listing a swap for trading, a swap execution facility or designated contract market should determine that the reference price indices used for its contracts are not readily susceptible to manipulation. Accordingly, careful consideration should be given to the potential for manipulation or distortion of the cash settlement price, as well as the reliability of that price as an indicator of cash market values. Appropriate consideration also should be given to the commercial acceptability, public availability, and timeliness of the price series that is used to calculate the cash settlement price. Documentation demonstrating that the settlement price index is a reliable indicator of market values and conditions and is highly regarded by industry/market agents should be provided. Such documentation may take on various forms, including carefully documented interviews with principal market trading agents, pricing experts, marketing agents, etc. Appropriate consideration also should be given to the commercial acceptability, public availability, and timeliness of the price series that is used to calculate the cash flows of the swap.

(1) Where an independent, private-sector third party calculates the referenced price index, the designated contract market should verify that the third party utilizes business practices that minimize the opportunity or incentive to manipulate the cash-settlement price series. Such safeguards may include lock-downs, prohibitions against derivatives trading by employees, or public dissemination of the names of sources and the price quotes they provide. Because a cash-settled contract may create an incentive to manipulate or artificially influence the underlying market from which the cash-settlement price is derived or to exert undue influence on the cash-settlement computation in order to profit on a futures position in that commodity, a designated contract market should, whenever practicable, enter into an information-sharing agreement with the third-party provider which would enable the designated contract market to better detect and prevent manipulative behavior.
(ii) Where a designated contract market itself generates the cash settlement price series, the designated contract market should establish calculation procedures that safeguard against potential attempts to artificially influence the price. For example, if the cash settlement price is derived by the designated contract market based on a survey of cash market sources, the designated contract market should maintain a list of such entities which all should be reputable sources with knowledge of the cash market. In addition, the sample of sources polled should be representative of the cash market, and the poll should be conducted at a time when trading in the cash market is active.

(iii) The cash-settlement calculation should involve appropriate computational procedures that eliminate or reduce the impact of potentially unrepresentative data.

(2) Speculative Limits: Specific rules and policies for speculative position limits are set forth in part 151 and/or part 151, as applicable, of the Commission’s regulations.

(3) Intraday Market Restrictions: Designated contract markets or swap execution facilities should have in place intraday market restrictions that pause or halt trading in the event of extraordinary price moves that may result in distorted prices. Such restrictions need to be coordinated with other markets that may be a proxy or a substitute for the contracts traded on their facility. For example, coordination with NYSE rule 80.B Circuit Breaker Trading Halts. The designated contract market or swap execution facility should adopt rules to specifically address who is authorized to declare an emergency; how the designated contract market or swap execution facility will notify the Commission of its decision that an emergency exists; how it will address conflicts of interest in the exercise of emergency authority; and how it will coordinate trading halts with markets that trade the underlying price reference index or product.

(4) Settlement Method. The designated contract market or swap execution facility should follow the guidance in paragraph (c)(4) (Contract Terms and Conditions Requirements for Futures Contracts Settled by Cash Settlement) of this appendix C to meet compliance, or paragraph (b)(2) (Contract Terms and Conditions Requirements for Futures Contracts Settled by Physical Delivery) of this appendix C, as appropriate.

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