

Comments on Provisions Common to Registered Entities

I am writing to provide my comments on the proposed rules on provisions common to registered entities. I appreciate the Commission's efforts to amend the regulations under the Commodity Exchange Act (CEA) that govern how registered entities submit self-certifications, and requests for approval, of their rules, rule amendments, and new products for trading and clearing, as well as the Commission's review and processing of such submissions. I agree that the proposed rules will streamline and modernize the certification and approval process for registered entities, while ensuring that the Commission has adequate oversight and authority to protect the public interest and market integrity.

However, I also have some suggestions regarding some aspects of the proposed rules.

The first issue is related to the design, functionality, security, and accessibility of the web-based submission system that the proposed rules would require registered entities to use for submitting self-certifications and requests for approval electronically. The proposed rules do not provide any details or specifications about the web-based submission system, such as how to access, navigate, or troubleshoot the system, how to protect confidential or proprietary information, or how to ensure completeness and accuracy of submissions. This could raise some questions or concerns for registered entities and market participants who have to use the web-based submission system, especially if they encounter any technical difficulties or errors.

I suggest that the Commission provide more information and guidance on the web-based submission system, such as its design, functionality, security, and accessibility features, as well as its testing, maintenance, and support procedures. The Commission should also ensure that the web-based submission system is user-friendly, reliable, secure, and compatible with different devices and browsers.

A second issue is related to the criteria and procedures for staying the certification or approval of a submission if it raises novel or complex issues that require additional time for review, or if it appears to be inconsistent with the CEA or the Commission's regulations. The proposed rules do not define what constitutes a novel or complex issue, or how the Commission would determine if a submission is inconsistent with the CEA or the Commission's regulations. This could create some uncertainty or inconsistency for registered entities and market participants who have to anticipate or respond to the Commission's decision to stay a certification or approval.

I suggest that the Commission better define what constitutes a novel or complex issue, and provide examples of such issues. The Commission should also explain how it would determine if a submission is inconsistent with the CEA or the Commission's regulations, and provide examples of such submissions. The Commission should also establish clear and transparent procedures for notifying registered entities of its decision to stay a certification or approval, as well as for requesting additional information or analysis from registered entities.

A third issue is related to the content and format of submissions, including the use of standardized terms and definitions, and the inclusion of supporting information and analysis. The proposed rules provide some guidance on what information and analysis should be included in submissions, but they do not provide any examples or templates of submissions that comply with the guidance. This could make it difficult or challenging for registered entities and market participants who have to prepare and submit their new products, new rules, or rule amendments in accordance with the guidance.

I suggest that the Commission provide examples or templates of submissions that comply with the guidance, and allow registered entities to use them as references or models for their own submissions.

The fourth issue is related to the scope and criteria for event contracts based on certain excluded commodities, such as terrorism, war, or gaming events, and the requirement for registered entities to submit such contracts for prior approval by the Commission. The proposed rules prohibit event contracts based on certain excluded commodities, unless they are submitted for prior approval by the Commission, and provide some guidance on what factors the Commission would consider in approving or disapproving such contracts. However, the proposed rules do not explain how the Commission would determine if an event contract is based on an excluded commodity, or what criteria it would use to approve or disapprove such contracts. This could create some uncertainty or inconsistency for registered entities and market participants who have to submit or trade event contracts based on excluded commodities.

I suggest that the Commission define what constitutes an excluded commodity, and provide examples of such commodities. The Commission could also explain what criteria it would use to approve or disapprove event contracts based on excluded commodities, and provide examples of such contracts.

The fifth issue is related to the coordination and communication of jurisdictional determination by the Commission and the Securities and Exchange Commission (SEC) for submissions that may involve both agencies' jurisdictions. The proposed rules codify the statutory requirements relating to tolling of the review period pending jurisdictional determination by the Commission and the SEC. However, the proposed rules do not provide any guidance or procedures on how the Commission and the SEC would

coordinate and communicate their jurisdictional determinations, or how they would resolve any disputes or disagreements over their respective jurisdictions. This could create some delays or difficulties for registered entities and market participants who have to wait for the jurisdictional determination before launching or trading new products or rules.

I suggest that the Commission establish clear and transparent procedures for coordinating and communicating with the SEC on jurisdictional determination, as well as for resolving any disputes or disagreements over their respective jurisdictions. The Commission could also ensure that the jurisdictional determination is made in a timely and efficient manner, and that registered entities and market participants are notified of the outcome as soon as possible.

Finally, I encourage the Commission to examine the interaction and consistency of the proposed rules with other parts of Title 17 of the Code of Federal Regulations that also deal with similar topics, such as Parts 39, 41 or 43 of the Title. The proposed rules would amend the regulations under Part 40 of Title 17, which governs the submission and review of new products, new rules, and rule amendments by registered entities. However, the proposed rules may not sufficiently address how they would affect or interact with other parts of Title 17 that may have overlapping or conflicting requirements or standards for registered entities and market participants.

Different parts of Title 17 may have different definitions, procedures, or criteria for new products, new rules, or rule amendments that may not be consistent with the proposed rules under Part 40. These parts may have different requirements or standards for submitting, reviewing, approving, or reporting new products, new rules, or rule amendments than those under Part 40.

This might potentially create some confusion or inconsistency for registered entities and market participants who have to comply with multiple parts of Title 17 when submitting or trading new products or rules. For instance, a registered entity may have to submit a new product or rule under Part 40, but also have to comply with the requirements or standards of Part 39, Part 41, or Part 43 for the same product or rule. This may result in duplication, contradiction, or ambiguity in the submission and review process. Alternatively, a registered entity may submit a new product or rule under Part 40 that is certified or approved by the Commission, but later find out that the same product or rule violates or conflicts with the requirements or standards of another Part. This may result in enforcement actions, litigation, or market disruption.

Therefore, I suggest that the Commission should clarify and harmonize the proposed rules under Part 40 with other parts of Title 17 that are relevant to the certification and approval process for registered entities, and provide clear guidance on how registered entities and market participants should comply with different parts of Title 17 when

submitting or trading new products or rules. This would help to avoid confusion, inconsistency, and conflict among different parts of Title 17, and ensure that the certification and approval process for registered entities is efficient and transparent.

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