

PROPOSED REVISED PART 40— PROVISIONS COMMON TO REGISTERED ENTITIES

1. The authority citation for part 40 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 7, 7a, 8 and 12, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Pub. L. 111–203, 124 Stat. 1376 (2010).

2. Revise § 40.11 to read as follows:

§ 40.11 ~~Review of event~~Event contracts based upon certain excluded commodities.

(a) Prohibition. Agreements, contracts, transactions, or swaps described in paragraphs (a)(1) and (2) of this section are contrary to the public interest and shall not be listed for trading or accepted
~~(a) Prohibition. A registered entity shall not list for trading or accept~~ for clearing on or through ~~the~~a registered entity ~~any of the following:~~

~~(1) An agreement, contract, transaction, or swap based upon an excluded commodity, as defined in Section 1a(19)(iv) of the Act, that involves, relates to, or references terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law; or~~

(1) Agreements, contracts, transactions, or swaps in excluded commodities based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(19)(i) of the Act) that involve:

(i) activity that is unlawful under any Federal or State law;

(ii) terrorism;

(iii) assassination;

(iv) war; or

(v) gaming.

(2) Agreements, contracts, transactions, or swaps in excluded commodities based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate,

~~(2) An agreement, contract, transaction, or swap based upon an excluded~~value, or levels of a commodity, as defined in Section described in section 1a(19)(i) of the Act, which involves, relates to, or references an ~~that involve other~~ activity that is similar to an activity enumerated in ~~§ 40.11~~paragraphs (a)(1)(i)-(v) of this partsection, and

that the Commission determines, by rule or regulation, to be contrary to the public interest.

~~(b) [Reserved]~~Gaming.

(1) For purposes of paragraph (a)(1)(v) of this section, “gaming” means the staking or risking by any person of something of value upon:

(i) the outcome of a contest of others;

(ii) the outcome of a game involving skill or chance;

(iii) the performance of one or more competitors in one or more contests or games; or

(iv) any other occurrence or non-occurrence in connection with one or more contests or games.

(2) For purposes of paragraph (a)(1)(v) of this section, “gaming” includes, but is not limited to, the staking or risking by any person of something of value upon the outcome of a political contest, including an election or elections, an awards contest, or a game in which one or more athletes compete, or an occurrence or non-occurrence in connection with such a contest or game, regardless of whether it directly affects the outcome.

(c) 90-day review.

~~(e1) 90-day review and approval of certain event contracts.~~—The Commission may determine, based upon a review of the terms or conditions of a submission made by a registered entity under § 40.2 or § 40.3, that an agreement, contract, ~~transaction, or swap based on an excluded commodity, as defined in Section 1a(19)(iv) of the Act, which may involve, relate to, or reference an activity~~ transaction, or swap as described in paragraph (a) of this section may involve an activity enumerated in ~~§ 40.11 paragraphs (a)(1) or § 40.11(a)(2),~~ be of this section, and is subject to a 90-day review. ~~The 90-day review shall~~

(2) The Commission shall notify the registered entity of its determination to conduct a 90-day review and post notice of the determination on its website. The 90-day review period shall commence ~~from~~ on the date the Commission notifies the registered entity of ~~a potential violation of § 40.11(a)~~ its determination to conduct a 90-day review.

~~(13)~~ The Commission shall request that the registered entity suspend the listing or trading of ~~any~~ the agreement, contract, transaction, or swap ~~based on an excluded commodity, as defined in Section 1a(19)(iv) of the Act, which may involve, relate to, or reference an activity enumerated in § 40.11(a)(1) or § 40.11(a)(2), during the Commission's 90-day review period. The Commission shall post on the Web site a notification of the intent to carry out a 90-day review.~~ subject to the 90-day review during the pendency of the review period.

~~(24) Final determination.~~—The Commission shall issue an order approving or disapproving an agreement, contract, transaction, or swap that is subject to a 90-day review under § 40.11(c) not later than 90 days subsequent to the date that the Commission commences review, or if applicable, at the conclusion of such extended period agreed to or requested by the registered entity.