
15 U.S. Code § 8306

Determining status of novel derivative products

(a) Process for determining the status of a novel derivative product

(1) Notice

(A) In general

Any person filing a proposal to list or trade a novel derivative product that may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities) may concurrently provide notice and furnish a copy of such filing with the Securities and Exchange Commission and the Commodity Futures Trading Commission. Any such notice shall state that notice has been made with both Commissions.

(B) Notification

If no concurrent notice is made pursuant to subparagraph (A), within 5 business days after determining that a proposal that seeks to list or trade a novel derivative product may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities), the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall notify the other Commission and provide a copy of such filing to the other Commission.

(2) Request for determination

(A) In general

No later than 21 days after receipt of a notice under paragraph (1), or upon its own initiative if no such notice is received, the Commodity Futures Trading Commission may request that the Securities and Exchange Commission issue a determination as to whether a product is a security, as defined in section 78c(a)(10) of this title.

(B) Request

No later than 21 days after receipt of a notice under paragraph (1), or upon its own initiative if no such notice is received, the Securities and Exchange Commission may request that the Commodity Futures Trading Commission issue a determination as to whether a product is a contract of sale of a commodity for future delivery, an option on such a contract, or an option on a commodity subject to the Commodity Futures Trading Commission's exclusive jurisdiction under section 2(a)(1)(A) of title 7.

(C) Requirement relating to request

A request under subparagraph (A) or (B) shall be made by submitting such request, in writing, to the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable.

(D) Effect

Nothing in this paragraph shall be construed to prevent—

- (i) the Commodity Futures Trading Commission from requesting that the Securities and Exchange

Commission grant an exemption pursuant to section 78mm(a)(1) of this title with respect to a product that is the subject of a filing under paragraph (1); or

(ii) the Securities and Exchange Commission from requesting that the Commodity Futures Trading Commission grant an exemption pursuant to section 6(c)(1) of title 7 with respect to a product that is the subject of a filing under paragraph (1),

Provided, however, that nothing in this subparagraph shall be construed to require the Commodity Futures Trading Commission or the Securities and Exchange Commission to issue an exemption requested pursuant to this subparagraph; *provided further*, That an order granting or denying an exemption described in this subparagraph and issued under paragraph (3)(B) shall not be subject to judicial review pursuant to subsection (b).

(E) Withdrawal of request

A request under subparagraph (A) or (B) may be withdrawn by the Commission making the request at any time prior to a determination being made pursuant to paragraph (3) for any reason by providing written notice to the head of the other Commission.

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