

for believing that authorized participants are “eligible commercial entities” as defined in section 1a(11) of the Act.

[66 FR 42270, Aug. 10, 2001, as amended at 67 FR 62352, Oct. 7, 2002]

PART 37—DERIVATIVES TRANSACTION EXECUTION FACILITIES

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APPENDIX A TO PART 37—APPLICATION GUIDANCE

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AUTHORITY: 7 U.S.C. 2, 5, 6, 6c, 6(c), 7a and 12a, as amended by Appendix E of Pub. L. 106-554, 114 Stat. 2763A-365.

SOURCE: 66 FR 42271, Aug. 10, 2001, unless otherwise noted.

§ 37.1 Scope and definition.

(a) *Scope.* The provisions of this part apply to any board of trade or trading facility operating as a registered derivatives transaction execution facility.

(b) *Definition.* As used in this part, the term “eligible commercial entity” means, and shall include, in addition to a party or entity so defined in section 1a(11) of the Act, a registered floor trader or floor broker trading for its own account, whose trading obligations are guaranteed by a registered futures commission merchant.

§ 37.2 Exemption.

Contracts, agreements or transactions traded on a derivatives transaction execution facility registered as such with the Commission under section 5a of the Act, the facility and the facility’s operator are exempt from all Commission regulations for such activity, except for the requirements of this part 37 and §§ 1.3, 1.31, 1.59(d), 1.63(c),

15.05, 33.10, part 40, part 41 and part 190 of this chapter, and as applicable to the market, parts 15 through 21 of this chapter, which are applicable to a registered derivatives transaction execution facility as though they were set forth in this section and included specific reference to derivatives transaction execution facilities.

[67 FR 62876, Oct. 9, 2002]

§ 37.3 Requirements for underlying commodities.

(a) *Trading facilities limited to eligible traders.* Trading facilities limited to eligible traders as defined by section 5a(b)(3) of the Act, may trade any contract of sale of a commodity for future delivery (or option on such a contract) on any of the following underlying commodities:

(1) Commodities having—

(i) A nearly inexhaustible deliverable supply;

(ii) A deliverable supply that is sufficiently large that the contract is highly unlikely to be susceptible to the threat of manipulation; or

(iii) No cash market;

(2) Commodities that are a security futures product, and the registered derivatives transaction execution facility is a national securities exchange registered under the Securities Exchange Act of 1934;

(3) Commodities for which the Commission has determined, based on the market characteristics and surveillance history, and the self-regulatory record and capacity of the facility, that trading in the contract (or option) based on that commodity is highly unlikely to be susceptible to the threat of manipulation; or

(4) Commodities that are agricultural commodities enumerated in section 1a(4) of the Act that have been so approved by the Commission under the procedures of paragraph (c) of this section.

(5) The commodities that meet the criteria of paragraph (a)(1) of this section are the commodities defined in section 1a(13) of the Act as “excluded commodities.”

(6) The Commission may make the determination described in paragraph (a)(3) of this section by rule, regulation

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or order, after notice and an opportunity for a hearing through submission of written data, views and arguments. A registered derivatives transaction execution facility may request that the Commission make such an individualized determination by filing with the Secretary of the Commission at its Washington, DC headquarters a petition that includes:

(i) The terms and conditions of the product to be listed; and

(ii) A demonstration, supported by data, that the underlying commodity has a sufficiently liquid and deep cash market and a surveillance history based on actual trading experience and in light of any self-regulatory undertakings of the facility, to provide assurance that the contract or product is highly unlikely to be manipulated. The demonstration should address the following specific factors to the extent that the factor is not self-evident:

(A) A high level of cash-market liquidity;

(B) Cash-market bid-ask spreads that are narrow relative to traded values;

(C) Relatively frequent cash market transactions involving participants that represent major segments of the industry;

(D) The absence of material impediments to participation in the cash market by commercial entities;

(E) Transfer of ownership of the cash commodity that is easily and readily accomplished at minimal cost;

(F) A pattern of cash market pricing that exhibits continuity and the absence of frequent, sharp price changes such that a person cannot readily move materially the price of the product in normal cash market channels;

(G) A history of actual trading experience that the contract or product's terms and conditions provide for a deliverable supply, or a reliable and acceptable cash-settlement procedure, that is adequate to minimize the threat of market abuses such as price manipulation and distortions, congestion, and defaults; and

(H) Procedures to effectively oversee the market, including a large trader reporting system, as well as a history of active surveillance to prevent or mitigate market problems.

(b) *Trading facilities limited to eligible commercial entities.* Any commodity, other than the agricultural commodities enumerated in section 1a(4) of the Act, is eligible under section 5a(b)(2)(F) of the Act to be traded on a derivatives transaction execution facility that limits participants on the facility to eligible commercial entities as defined by § 37.1(b) trading for their own account. *Provided, however,* an agricultural commodity enumerated in section 1a(4) of the Act may be so approved by the Commission under the procedures of paragraph (c) of this section.

(c) *Enumerated agricultural commodities.* [Reserved]

§ 37.4 Election to trade excluded and exempt commodities.

A board of trade that is or elects to become a registered derivatives transaction execution facility may, pursuant to section 5a(g) of the Act, trade agreements, contracts, or transactions that are excluded or exempt from the Act pursuant to sections 2(c), 2(d), 2(g), or 2(h).

§ 37.5 Procedures for registration.

(a) *Notification by contract markets.* (1) To operate as a registered derivatives transaction execution facility pursuant to section 5a of the Act, a board of trade, facility or entity that is designated as a contract market, which is not a dormant contract market as defined in § 40.1 of this chapter, must:

(i) Comply with the core principles for operation under section 5a(d) of the Act and the provisions of this part 37; and

(ii) Notify the Commission of its intent to so operate by filing with the Secretary of the Commission at its Washington, DC, headquarters a copy of the facility's rules (which may be trading protocols) or a list of the designated contract market's rules that apply to operation of the derivatives transaction execution facility, and a certification by the contract market that it meets:

(A) The requirements for trading of section 5a(b) of the Act; and

(B) The criteria for registration under section 5a(c) of the Act.