

Commodity Futures Trading Commission

§ 37.5

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.

(2) Before using the notification procedure of paragraph (a) of this section for registration as a derivatives transaction execution facility, a dormant contract market as defined in §40.1 of this chapter must reinstate its designation under §38.3(a)(2) of this chapter.

(b) *Registration by application*—(1) *Initial registration*. A board of trade, facility or entity shall be deemed to be registered as a derivatives transaction execution facility thirty days after receipt (during the business hours defined in Sec. 40.1 of this chapter) by the Secretary of the Commission at its Washington, DC, headquarters, of an application for registration as a derivatives transaction execution facility unless notified otherwise during that period, or, as determined by Commission order, registered upon conditions, if:

(i) The application demonstrates that the applicant satisfies the requirements for trading and the criteria for registration of sections 5a(b) and 5a(c) of the Act, respectively;

(ii) The submission is labeled “Application for DTF Registration”;

(iii) The submission includes:

(A) The derivatives transaction execution facility’s rules, which may be trading protocols;

(B) Any agreements entered into or to be entered into between or among the facility, its operator or its participants, technical manuals and other guides or instructions for users of such facility, descriptions of any system test procedures, tests conducted or test results, and descriptions of the trading mechanism or algorithm used or to be used by such facility, to the extent such documentation was otherwise prepared; and

(C) To the extent that compliance with the requirements for trading or the criteria for recognition is not self-evident, a brief explanation of how the rules or trading protocols satisfy each of the conditions for registration;

(iv) The applicant does not amend or supplement the application for recognition, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period;

(v) The applicant identifies with particularity information in the application that will be subject to a request for confidential treatment and supports that request for confidential treatment with reasonable justification; and

(vi) The applicant has not instructed the Commission in writing at the time of submission of the application or during the review period to review the application pursuant to the time provisions of and procedures under section 6 of the Act.

(2) *Reinstatement of dormant registration*. Before listing products for trading, a dormant derivatives transaction execution facility as defined in §40.1 must reinstate its registration under the procedures of paragraphs (a)(1) or (b)(1) of this section, as applicable; *provided however*, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

(c) *Guidance for applicants*. Appendix A to this part provides guidance to applicants for registration as a derivatives transaction execution facility on how the conditions for registration in sections 5a(b) and 5a(c) of the Act could be satisfied.

(d) *Termination of fast track review*. During the thirty-day period for review pursuant to paragraph (b) of this section, the Commission shall notify the applicant seeking registration that the Commission is terminating review under this section and will review the proposal under the time period and procedures of section 6 of the Act, if it appears that the application’s form or substance fails to meet the requirements of this part. This termination notification will state the nature of the issues raised and the specific condition of registration that the applicant would violate, appears to violate, or the violation of which cannot be ascertained from the application. Within ten days of receipt of this termination notification, the applicant seeking registration may request that the Commission render a decision whether to register the derivatives transaction

execution facility or to institute a proceeding to deny the proposed application under procedures specified in section 6 of the Act by notifying the Commission that the applicant seeking registration views its submission as complete and final as submitted.

(e) *Request for withdrawal of application for registration or withdrawal of registration.* An applicant to be registered, or a registered derivatives transaction execution facility may withdraw its application or its registration by filing with the Commission at its Washington, DC, headquarters such a request. Withdrawal from registration shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the application for registration was pending with, or that the facility was registered by, the Commission.

(f) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to exercise the functions provided under paragraph (d) of this section.

(2) The director may submit to the Commission for its consideration any matter that has been delegated in this paragraph.

(3) Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (f)(1) of this section.

[66 FR 42271, Aug. 10, 2001, as amended at 67 FR 62352, Oct. 7, 2002; 67 FR 62876, Oct. 9, 2002]

§ 37.6 Compliance with core principles.

(a) *In general.* To maintain registration as a derivatives transaction execution facility upon commencing operations by listing products for trading or otherwise, or for a dormant derivatives transaction execution facility as defined in § 40.1 of this chapter that has been reinstated under § 37.5(b)(2) upon recommencing operations by relisting products for trading or otherwise, and on a continuing basis thereafter, the derivatives transaction execution facility must have the capacity to be, and

be, in compliance with the core principles of section 5a(d) of the Act.

(b) *New and reinstated derivatives transaction execution facilities*—(1) *Certification of compliance.* Unless an applicant for registration or for reinstatement of registration has chosen to make a voluntary demonstration under paragraph (b)(2) of this section, a newly registered derivatives transaction execution facility at the time it commences operations, or a dormant derivatives transaction execution facility as defined in § 40.1 of this chapter at the time that it recommences operations, must certify to the Commission that it has the capacity to, and will, operate in compliance with the core principles under section 5a(d) of the Act.

(2) *Voluntary demonstration of compliance.* An applicant for registration or for reinstatement of registration may choose to make a voluntary demonstration of its capacity to operate in compliance with the core principles as follows:

(i) At least thirty days prior to commencing or recommencing operations, the applicant for registration or for reinstatement of registration must file (during the business hours defined in § 40.1 of this chapter) with the Secretary of the Commission at its Washington, DC, headquarters, either separately or with the application required by § 37.5, a submission that includes:

(A) The label, "Demonstration of Compliance with Core Principles for Operation";

(B) The derivatives transaction execution facility's rules, which may be trading protocols, that enable or empower the facility to comply with the core principles;

(C) Any agreements entered into or to be entered into between or among the facility, its operator or its participants that enable or empower the facility to comply with the core principles, including where applicable, technical manuals and other guides or instructions for users of the facility; and

(D) To the extent that capacity to comply with a core principle is not self-evident, a brief explanation of how the facility has the capacity to meet the core principle.