

Commission has determined performs a significant price discovery function under paragraph (c)(2)(iii) of this section may petition the Commission at any time to modify or vacate that determination. The petition shall contain an appropriate justification for the request. The Commission, after notice and opportunity for a hearing through the submission of written data, views and arguments, shall by order grant, grant subject to conditions, or deny such request.

(3) *Required representation.* The facility must represent in the notification provided under paragraph (a) of this section that it requires, and require, that each participant agree to comply with all applicable law and the facility must have a reasonable basis for believing that authorized participants are “eligible commercial entities” as defined in section 1a(11) of the Act.

(4) *Annual Certification.* An electronic trading facility operating in reliance upon the exemption in Section 2(h)(3) of the Act shall file with the Commission annually, no later than the end of each calendar year, a notice that includes: (i) A statement that it continues to operate under the exemption; and (ii) a certification that the information contained in the previous Notification of Operation as an Exempt Commercial Market is still correct.

[66 FR 42270, Aug. 10, 2001, as amended at 67 FR 62352, Oct. 7, 2002; 69 FR 43294, July 20, 2004; 71 FR 1962, Jan. 12, 2006]

PART 37—DERIVATIVES TRANSACTION EXECUTION FACILITIES

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APPENDIX A TO PART 37—GUIDANCE ON COMPLIANCE WITH REGISTRATION CRITERIA

APPENDIX B TO PART 37—GUIDANCE ON COMPLIANCE WITH CORE PRINCIPLES

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 operating as or applying to become registered as a derivatives transaction execution facility under Sections 5a and 6 of the Act.

(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.

[66 FR 42271, Aug. 10, 2001, as amended at 71 FR 1962, Jan. 12, 2006]

§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:

(a) Section 15.05, Part 40 and Part 41 of this chapter, including any related definitions and cross-referenced sections; and

(b) Sections 1.3, 1.31, 1.59(d), 1.60, 1.63(c), 33.10, and Part 190 of this chapter and, as applicable to the market, §§15.00 to 15.04 and Parts 16 through 21 of this chapter, including any related definitions and cross-referenced sections, which are applicable as though they were set forth in this Part 37 and included specific reference to derivatives transaction execution facilities.

[71 FR 1962, Jan. 12, 2006]

§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

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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.

(b) 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.”

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

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

(2) 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 as-

urance 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:

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

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

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

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

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

(vi) 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;

(vii) 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

(viii) 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.

(d) *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.

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

[66 FR 42271, Aug. 10, 2001, as amended at 71 FR 1963, Jan. 12, 2006]