

§ 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) Parts 15 through 21, 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, 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.

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§ 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.

(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 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:

(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;