

(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]

§ 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 that is designated as a contract market, which is not a dormant contract market as defined in § 40.1 of this chapter, must:

(i) 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 (as defined in § 40.1 of this chapter) or a list of the designated contract market's rules that apply to the 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.

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

(2) Before using the notification procedure of paragraph (a)(1)(i) 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)(3) of this chapter.

(b) *Application Procedures.* (1) *Statutory (180-day) review procedures.* A board of trade desiring to be registered as a derivatives transaction execution facility shall file an application for registration with the Secretary of the Commission at its Washington, DC, headquarters. Except as provided under the 90-day review procedures described in paragraph (b)(2) of this section, the Commission will review the application for registration as a derivatives transaction execution facility pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Act. The Commission shall approve or deny the application or, if deemed appropriate, register the applicant as a derivatives transaction execution facility subject to conditions.

(i) The applicant must demonstrate that it satisfies the requirements for trading and the criteria for registration of sections 5a(b) and 5a(c) of the Act, respectively, and the provisions of this part 37.

(ii) The application must include the following:

(A) The derivatives transaction execution facility's rules (as defined in § 40.1 of this chapter);

(B) Any technical manuals and other guides or instructions for users of such facility, descriptions of any system test procedures, tests conducted or test results, descriptions of the trading mechanism or algorithm used or to be

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used by such facility, and contingency or disaster recovery plans;

(C) A copy of any documents describing the applicant's legal status and governance structure;

(D) An executed or executable copy of any agreements or contracts entered into or to be entered into by the applicant, including partnership or limited liability company, third-party regulatory service, or member or user agreements, that enable or empower the applicant to comply with a requirement for trading or a registration criterion (final, executed copies of such documents must be submitted prior to registration);

(E) A copy of any manual or other document describing, with specificity, the manner in which the applicant will conduct trade practice, market and financial surveillance;

(F) A document that describes the manner in which the applicable items in § 37.5(b)(1)(ii)(A) through (E) enable or empower the applicant to comply with each requirement for trading and registration criterion (a regulatory chart); and

(G) To the extent that any of the items in § 37.5(b)(1)(ii)(A) through (E) raise issues that are novel, or for which compliance with a requirement for trading or condition for registration is not self-evident, an explanation of how that item and the application satisfy the requirements for trading and registration criteria.

(iii) The applicant must identify with particularity information in the application that will be subject to a request for confidential treatment pursuant to § 145.9 of this chapter.

(2) *Ninety-day review procedures.* A board of trade desiring to be registered as a derivatives transaction execution facility may request that its application be reviewed on an expedited basis and that the applicant be registered as a derivatives transaction execution facility not later than 90 days after the date of receipt of the application for registration by the Secretary of the Commission. The 90-day period shall begin on the first business day (during the business hours defined in § 40.1 of this chapter) that the Commission is in receipt of the application. Unless the Commission notifies the applicant dur-

ing the 90-day period that the expedited review has been terminated pursuant to § 37.5(c), the Commission will register the applicant as a derivatives transaction execution facility during the 90-day period. If deemed appropriate by the Commission, the registration may be subject to such conditions as the Commission may stipulate.

(i) The applicant must demonstrate that it satisfies the requirements for trading and the criteria for registration of sections 5a(b) and 5a(c) of the Act, respectively, and the provisions of this part 37;

(ii) The application must include the items described in § 37.5(b)(1)(ii) and (iii); and

(iii) The applicant must not amend or supplement the application, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during the 90-day review period.

(c) *Termination of 90-day review.* (1) During the 90-day period for review pursuant to paragraph (b)(2) of this section, the Commission shall notify the applicant seeking registration that the Commission is terminating review under this section, and will review the application under the 180-day time period and procedures of section 6(a) of the Act, if it appears to the Commission that the application:

(i) Is materially incomplete;

(ii) Fails in form or substance to meet the requirements of this part;

(iii) Raises novel or complex issues that require additional time for review; or

(iv) Is amended or supplemented in a manner that is inconsistent with § 37.5(b)(2)(iii).

(2) The Commission shall also terminate review under this section if requested in writing to do so by the applicant.

(3) The termination notification shall identify the deficiencies in the application that render it incomplete, the manner in which the application fails to meet the requirements of this part, the novel or complex issues that require additional time for review, or the amendment or supplement that is inconsistent with § 37.5(b)(2)(iii).

(d) *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), (b)(1) or (b)(2) of this section; provided, however, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

(e) *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 delegate, authority to notify the applicant seeking registration under section 6(a) of the Act that the application is materially incomplete and the running of the 180-day period is stayed or that the 90-day review under paragraph (b)(2) of this section is terminated.

(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 (e)(1) of this section.

(f) *Request for withdrawal of application for registration.* An applicant for registration may withdraw its application submitted pursuant to paragraph (b)(1) or (b)(2) of this section by filing such a request with the Commission at its Washington, DC, headquarters. Withdrawal of an application for 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 the Commission.

(g) *Request for vacation of registration.* A registered derivatives transaction execution facility may vacate its registration under section 7 of the Act by filing such a request with the Commission at its Washington, DC, headquarters. Vacation of 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 facility was registered by the Commission.

(h) *Guidance for applicants.* Appendix A to this part provides guidance on how the registration criteria in section 5a(c) of the Act can be satisfied.

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§ 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(d) 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. Such demonstration may be included in an application submitted pursuant to §37.5 of this part.

(i) The demonstration would include the following:

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

(B) A document that describes the manner in which the applicant will