

Commodity Futures Trading Commission

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conducted on the facility in reliance on such exemption; or

(ii) Attach its initial trading protocols and any amendments thereto in hard copy form to the notification required in paragraph (a) of this section and provide in a form and manner acceptable to the Commission, as determined by the Commission in response to a petition by the exempt market relying upon the exemption in section 2(h)(3) of the Act, information regarding transactions by large traders on the facility.

(2) *Special calls.* (i) All information required upon special call of the Commission under section 2(h)(5)(B)(iii) of the Act shall be prepared in the form and manner and in accordance with the instructions, and shall be transmitted at the time and to the office of the Commission, as may be specified in the call.

(ii) The Commission hereby delegates, until the Commission orders otherwise, the authority to make special calls as set forth in section 2(h)(5)(B)(iii) of the Act to the Director of the Division of Trading and Markets and to the Director of Economic Analysis to be exercised by either Director or by such other employee or employees as the Director may designate. The directors may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(3) *Subpoenas to foreign persons.* A foreign person whose access to a trading facility is limited or denied at the direction of the Commission based on the Commission's belief that the foreign person has failed timely to comply with a subpoena as provided under section 2(h)(5)(C)(ii) of the Act shall have an opportunity for a prompt hearing under the procedures provided in §§ 21.03(g) and (h) of this chapter.

(c) *Additional requirements.* (1) An electronic trading facility relying upon the exemption in section 2(h)(3) of the Act shall not represent to any person that it is registered with, designated, recognized, licensed or approved by the Commission.

(2) If the Commission finds by order, after notice and an opportunity for a hearing through submission of written data, views and arguments, that the facility performs a significant price discovery function for transactions in the cash market for the underlying commodity, the facility must disseminate publicly price, trading volume and other trading data to the extent appropriate with respect to transactions executed in reliance on the exemption as specified in the order.

(3) 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.

PART 37—DERIVATIVES TRANSACTION EXECUTION FACILITIES

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APPENDIX A TO PART 37—APPLICATION GUIDANCE

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 the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

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"

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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 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.

EFFECTIVE DATE NOTE: At 67 FR 11227, Mar. 13, 2002, § 37.2 was revised, effective Apr. 12, 2002. For the convenience of the user, the revised text is set forth as follows:

§ 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, 41.27, part 40, 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.

§ 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—

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(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 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