

(ii) Unless the applicant requests an extension of time, the applicant shall be deemed to have demonstrated its capacity to comply with the core principles thirty days after receipt by the Commission, unless notified otherwise.

(iii) If it appears that the applicant has failed to make the requisite showing, the Commission will so notify the applicant at the end of that period. Upon commencement or recommencement of operations by the derivatives transaction execution facility, such a notice may be considered by the Commission in a determination to issue a notice of violation of core principles under section 5c(d) of the Act.

(c) *Existing derivatives transaction execution facilities*—(1) *In general.* Upon request by the Commission, a registered derivatives transaction execution facility shall file with the Commission such data, documents and other information as the Commission may specify in its request that demonstrates that the registered derivatives transaction execution facility is in compliance with one or more core principles as specified in the request or that is requested by the Commission to enable the Commission to satisfy its obligations under the Act.

(2) *Change of owners.* Upon a change of ownership of an existing registered derivatives transaction execution facility, the new owner shall file with the Secretary of the Commission at its Washington, DC, headquarters, a certification that the derivatives transaction execution facility meets the requirements for trading and the criteria for registration of sections 5a(b) and 5a(c) of the Act, respectively.

(d) *Guidance regarding compliance with core principles.* A derivatives transaction execution facility may meet the following core principles of section 5a(d) of the Act as specified in this paragraph:

(1) *Compliance with rules.* The core principle regarding compliance with rules under section 5a(d)(2) of the Act may be met, as appropriate to the facility, through the effective monitoring of limitations on access to the facility;

(2) *Monitoring of trading.* The core principle regarding monitoring of trading under section 5a(d)(3) of the Act

may be met, as appropriate to the market and the products traded thereon, by providing information to the Commission as requested to satisfy the Commission's obligations under the Act;

(3) *Disclosure of general information.* The core principle regarding disclosure of general information relevant to participation in trading on the facility under section 5a(d)(4)(D) of the Act also includes providing to market participants on a fair, equitable and timely basis information regarding, as appropriate to the market, prices, bids and offers, and such other information that the Commission may determine by rule, regulation or order, after notice and an opportunity for a hearing through submission of written data, views and arguments;

(4) *Daily publication of trading information.* The Commission will determine by order, after notice and an opportunity for a hearing through submission of written data, views and arguments, whether the requirement of the core principle on publication of trading information under section 5a(d)(5) of the Act applies to a particular product or products traded on a facility;

(5) *Fitness.* Appropriate minimum standards for participants having direct access to the facility under the core principle on fitness pursuant to section 5a(d)(6) of the Act also includes natural persons that directly or indirectly have greater than a ten percent ownership interest in the facility; and

(6) *In general.* Appendix B to this part provides guidance to registered derivatives transaction execution facilities on how the core principles under section 5a(d) of the Act could be satisfied.

[66 FR 42271, Aug. 10, 2001, as amended at 67 FR 62877, Oct. 9, 2002]

### § 37.7 Additional requirements.

(a) *Products.* Notwithstanding the provisions of section 5c(c) of the Act and § 40.2 of this chapter, derivatives transaction execution facilities need only notify the Commission of the listing of new products for trading, posting of new product descriptions, terms and conditions or trading protocols or providing for a new system product

functionality, by filing with the Secretary of the Commission at its Washington, D.C. headquarters, a submission labeled "DTF Notice of Product Listing" that includes the text of the product's terms or conditions, product description, trading protocol or description of the system functionality or by electronic notification of the foregoing at the time traders or participants in the market are notified, but in no event later than the close of business on the business day preceding initial listing, posting or implementation of the trading protocol or system functionality.

(b) *Material modifications.* Notwithstanding the provisions of section 5c(c) of the Act, registered derivatives transaction execution facilities need not certify rules or rule amendments under §40.6 of this chapter, and must only notify the Commission prior to placing into effect or amending such a rule, which includes trading protocols, by:

(1) Filing with the Secretary of the Commission at its Washington, D.C. headquarters at the time traders or participants in the market are notified, but (unless taken as an emergency action) in no event later than the close of business on the business day preceding implementation of the rule, a submission labeled, "DTF Rule Notice." The submission shall include the text of the rule or rule amendment (deletions and additions must be indicated); or

(2) By electronic notification to the Commission of the rule to be placed into effect or to be changed, in a format approved by the Secretary of the Commission, at the time traders or participants in the market are notified, but (unless taken as an emergency action) in no event later than the close of business on the business day preceding implementation. *Provided, however,* the derivatives transaction execution facility need not notify the Commission of rules or rule amendments for which no certification is required under §40.6(c) of this chapter.

(3) The derivatives transaction execution facility must maintain documentation regarding all changes to rules, terms and conditions or trading protocols.

(c) *Voluntary request for Commission approval of rules or products.* (1) A board

of trade or trading facility seeking to be registered as, or registered as, a derivatives transaction execution facility, may request that the Commission approve under section 5c(c) of the Act, any or all of its rules and subsequent amendments thereto, including both operational rules and the terms or conditions of products listed for trading on the facility, prior to their implementation or, notwithstanding the provisions of section 5c(c)(2) of the Act, at any time thereafter, under the procedures of §§40.5 or 40.3 of this chapter, as applicable. A derivatives transaction execution facility may label a product in its rules as, "Listed for trading pursuant to Commission approval," if the product and its terms or conditions have been approved by the Commission and it may label as, "Approved by the Commission," only those rules that have been so approved.

(2) Notwithstanding the forty-five day review period for voluntary approval under §40.3(b) of this chapter, the operating rules and the terms and conditions of one product submitted for voluntary Commission approval under §40.3 of this chapter, that has been submitted with, and at the same time as, an application for registration as a derivatives transaction execution facility, will be deemed approved by the Commission thirty days after receipt by the Commission, or at the conclusion of such extended period as provided under §40.3(c) of this chapter.

(3) An applicant for registration, or a registered derivatives transaction execution facility may request that the Commission consider under the provisions of section 15(b) of the Act any of the derivatives transaction execution facility's rules or policies, including both operational rules and the terms or conditions of products listed for trading, at the time of registration or thereafter.

(d) *Identify participants.* Registered derivatives transaction execution facilities must keep a record in permanent form, which shall show the true name, address, and principal occupation or business of any foreign trader executing transactions on the facility. In addition, upon request, a derivatives transaction execution facility shall provide to the Commission information

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regarding the name of any person exercising control over the trading of such foreign trader. *Provided, however*, this paragraph shall not apply to a derivatives transaction execution facility insofar as transactions in futures or option contracts of foreign traders are executed through, or the resulting transactions are maintained in accounts carried by, a registered futures commission merchant or introduced by an introducing broker subject to §1.37 of this chapter.

(e) *Identify persons subject to fitness requirement.* Upon request by any representative of the Commission, a registered derivatives transaction execution facility shall furnish to the Commission's representative a current list of persons subject to the fitness requirements of section 5a(d)(6) of the Act.

### **§ 37.8 Information relating to transactions on derivatives transaction execution facilities.**

(a) *Special calls for information from derivatives transaction execution facilities.* Upon special call by the Commission, a registered derivatives transaction execution facility shall provide to the Commission such information related to its business as a derivatives transaction execution facility, including information relating to data entry and trade details, in the form and manner and within the time as specified by the Commission in the special call.

(b) *Special calls for information from futures commission merchants.* Upon special call by the Commission, each person registered as a futures commission merchant that carries or has carried an account for a customer on a derivatives transaction execution facility shall provide information to the Commission concerning such accounts or related positions carried for the customer on that or other facilities or markets, in the form and manner and within the time specified by the Commission in the special call.

(c) *Special calls for information from participants.* Upon special call by the Commission, any person who enters into or has entered into an agreement, contract or transaction on a derivatives transaction execution facility shall provide information to the Com-

mission concerning such agreements, contracts or transactions or related agreements, contracts or transactions, or concerning related positions on other facilities or markets, in the form and manner and within the time specified by the Commission in the special call.

(d) *Delegation of authority.* The Commission hereby delegates, until the Commission orders otherwise, the authority set forth in paragraphs (a) through (c) of this section to the Directors of the Division of Clearing and Intermediary Oversight and separately to the Director of Market Oversight or such other employee or employees as the Directors may designate from time to time. 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.

### **§ 37.9 Enforceability.**

An agreement, contract or transaction entered into on, or pursuant to the rules of, a registered derivatives transaction execution facility shall not be void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable as a result of:

(a) A violation by the registered derivatives transaction execution facility of the provisions of section 5a of the Act or this part 37; or

(b) Any Commission proceeding to alter or supplement a rule, term or condition under section 8a(7) of the Act or any other proceeding the effect of which is to disapprove, alter, supplement, or require a registered derivatives transaction execution facility to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

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

### **APPENDIX A TO PART 37—APPLICATION GUIDANCE**

This appendix provides guidance to applicants for registration as derivatives transaction execution facilities under sections 5a(c) and 6 of the Act and §37.5, on meeting the criteria for registration both initially