

§ 37.8

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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 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 ex-

ecuted 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.

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

§ 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 or foreign brokers.* Upon special call by the Commission, each person registered as a futures commission merchant or a foreign broker (as defined in § 15.00 of this title) 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 Commission 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.

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

§ 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—GUIDANCE ON COMPLIANCE WITH REGISTRATION CRITERIA

This appendix provides guidance on meeting the criteria for registration under Sections 5a(c) and 6 of the Act and this part, both initially and on an ongoing basis. The guidance following each registration criterion is illustrative only of the types of

matters an applicant may address, as applicable, and is not intended to be used as a mandatory checklist. Addressing the issues and questions set forth in this appendix would help the Commission in its consideration of whether the application has met the criteria for registration. To the extent that compliance with, or satisfaction of, a criterion for registration is not self-explanatory from the face of the derivatives transaction execution facility's rules, (as defined in §40.1 of this chapter), the application should include an explanation or other form of documentation demonstrating that the applicant meets the registration criteria of Section 5a(c) of the Act and §37.5.

Registration Criterion 1 of section 5a(c) of the Act: *IN GENERAL—To be registered as a registered derivatives transaction execution facility, the board of trade shall be required to demonstrate to the Commission only that the board of trade meets the criteria specified in §37.5(b).*

A board of trade preparing to submit to the Commission an application to operate as a registered derivatives transaction execution facility is encouraged to contact Commission staff for guidance and assistance in preparing its application. Applicants may submit a draft application for review prior to the submission of an actual application without triggering the application review procedures of §37.5.

Registration Criterion 2 of section 5a(c) of the Act: *DETERRENCE OF ABUSES—The board of trade shall establish and enforce trading and participation rules that will deter abuses and has the capacity to detect, investigate, and enforce those rules, including means to—(A) obtain information necessary to perform the functions required under this section; or (B) use technological means to—(i) provide market participants with impartial access to the market; and (ii) capture information that may be used in establishing whether rule violations have occurred.*

An application of a board of trade to operate as a registered derivatives transaction execution facility should include arrangements and resources to deter abuses by effective and affirmative rule enforcement, including documentation of the facility's authority to do so; such trading and participation rules should be designed with adequate specificity. The submission should include documentation on the ability of the facility either to obtain necessary information or to provide market participants with impartial access and capture information for use in establishing possible rule violations.

Registration Criterion 3 of section 5a(c) of the Act: *TRADING PROCEDURES—The board of trade shall establish and enforce rules or terms and conditions defining, or specifications*