

(b) A swap execution facility shall establish and impartially enforce compliance with the rules of the swap execution facility, including, but not limited to—

- (1) The terms and conditions of any swaps traded or processed on or through the swap execution facility;
- (2) Access to the swap execution facility;
- (3) Trade practice rules;
- (4) Audit trail requirements;
- (5) Disciplinary rules; and
- (6) Mandatory trading requirements.

#### § 37.202 Access requirements.

(a) *Impartial access to markets and market services.* A swap execution facility shall provide any eligible contract participant and any independent software vendor with impartial access to its market(s) and market services, including any indicative quote screens or any similar pricing data displays, provided that the facility has:

- (1) Criteria governing such access that are impartial, transparent, and applied in a fair and nondiscriminatory manner;
- (2) Procedures whereby eligible contract participants provide the swap execution facility with written or electronic confirmation of their status as eligible contract participants, as defined by the Act and Commission regulations, prior to obtaining access; and
- (3) Comparable fee structures for eligible contract participants and independent software vendors receiving comparable access to, or services from, the swap execution facility.

(b) *Jurisdiction.* Prior to granting any eligible contract participant access to its facilities, a swap execution facility shall require that the eligible contract participant consent to its jurisdiction.

(c) *Limitations on access.* A swap execution facility shall establish and impartially enforce rules governing any decision to allow, deny, suspend, or permanently bar eligible contract participants' access to the swap execution facility, including when such decisions are made as part of a disciplinary or emergency action taken by the swap execution facility.

#### § 37.203 Rule enforcement program.

A swap execution facility shall establish and enforce trading, trade processing, and participation rules that will deter abuses and it shall have the capacity to detect, investigate, and enforce those rules.

(a) *Abusive trading practices prohibited.* A swap execution facility shall prohibit abusive trading practices on its markets by members and market participants. Swap execution facilities that permit intermediation shall prohibit customer-related abuses including, but not limited to, trading ahead of customer orders, trading against customer orders, accommodation trading, and improper cross trading. Specific trading practices that shall be prohibited include front-running, wash trading, pre-arranged trading (except for block trades permitted by part 43 of this chapter or other types of transactions certified to or approved by the Commission pursuant to the procedures under part 40 of this chapter), fraudulent trading, money passes, and any other trading practices that a swap execution facility deems to be abusive. A swap execution facility shall also prohibit any other manipulative or disruptive trading practices prohibited by the Act or by the Commission pursuant to Commission regulation.

(b) *Capacity to detect and investigate rule violations.* A swap execution facility shall have arrangements and resources for effective enforcement of its rules. Such arrangements shall include the authority to collect information and documents on both a routine and non-routine basis, including the authority to examine books and records kept by the swap execution facility's members and by persons under investigation. A swap execution facility's arrangements and resources shall also facilitate the direct supervision of the market and the analysis of data collected to determine whether a rule violation has occurred.

(c) *Compliance staff and resources.* A swap execution facility shall establish and maintain sufficient compliance staff and resources to ensure that it can conduct effective audit trail reviews, trade practice surveillance, market surveillance, and real-time market

monitoring. The swap execution facility's compliance staff shall also be sufficient to address unusual market or trading events as they arise, and to conduct and complete investigations in a timely manner, as set forth in § 37.203(f).

(d) *Automated trade surveillance system.* A swap execution facility shall maintain an automated trade surveillance system capable of detecting potential trade practice violations. The automated trade surveillance system shall load and process daily orders and trades no later than 24 hours after the completion of the trading day. The automated trade surveillance system shall have the capability to detect and flag specific trade execution patterns and trade anomalies; compute, retain, and compare trading statistics; compute trade gains, losses, and swap-equivalent positions; reconstruct the sequence of market activity; perform market analyses; and support system users to perform in-depth analyses and ad hoc queries of trade-related data.

(e) *Real-time market monitoring.* A swap execution facility shall conduct real-time market monitoring of all trading activity on its system(s) or platform(s) to identify disorderly trading and any market or system anomalies. A swap execution facility shall have the authority to adjust trade prices or cancel trades when necessary to mitigate market disrupting events caused by malfunctions in its system(s) or platform(s) or errors in orders submitted by members and market participants. Any trade price adjustments or trade cancellations shall be transparent to the market and subject to standards that are clear, fair, and publicly available.

(f) *Investigations and investigation reports—(1) Procedures.* A swap execution facility shall establish and maintain procedures that require its compliance staff to conduct investigations of possible rule violations. An investigation shall be commenced upon the receipt of a request from Commission staff or upon the discovery or receipt of information by the swap execution facility that indicates a reasonable basis for finding that a violation may have occurred or will occur.

(2) *Timeliness.* Each compliance staff investigation shall be completed in a timely manner. Absent mitigating factors, a timely manner is no later than 12 months after the date that an investigation is opened. Mitigating factors that may reasonably justify an investigation taking longer than 12 months to complete include the complexity of the investigation, the number of firms or individuals involved as potential wrongdoers, the number of potential violations to be investigated, and the volume of documents and data to be examined and analyzed by compliance staff.

(3) *Investigation reports when a reasonable basis exists for finding a violation.* Compliance staff shall submit a written investigation report for disciplinary action in every instance in which compliance staff determines from surveillance or from an investigation that a reasonable basis exists for finding a rule violation. The investigation report shall include the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; compliance staff's analysis and conclusions; and a recommendation as to whether disciplinary action should be pursued.

(4) *Investigation reports when no reasonable basis exists for finding a violation.* If after conducting an investigation, compliance staff determines that no reasonable basis exists for finding a rule violation, it shall prepare a written report including the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; and compliance staff's analysis and conclusions.

(5) *Warning letters.* No more than one warning letter may be issued to the same person or entity found to have committed the same rule violation within a rolling twelve month period.

(g) *Additional sources for compliance.* A swap execution facility may refer to the guidance and/or acceptable practices in Appendix B of this part to demonstrate to the Commission compliance with the requirements of § 37.203.

#### **§ 37.204 Regulatory services provided by a third party.**

(a) *Use of regulatory service provider permitted.* A swap execution facility