

§ 1.4

entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.

(rrrr) *Swap execution facility*. This term means a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

(1) Facilitates the execution of swaps between persons; and

(2) Is not a designated contract market.

(ssss) *Trading facility*. This term has the meaning set forth in section 1a(51) of the Act.

[41 FR 3194, Jan. 21, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 1.4 Electronic signatures, acknowledgments and verifications.

For purposes of complying with any provision in the Commodity Exchange Act or the rules or regulations in this Chapter I that requires a swap transaction to be acknowledged by a swap dealer or major swap participant or a document to be signed or verified by a customer of a futures commission merchant or introducing broker, a retail forex customer of a retail foreign exchange dealer or futures commission merchant, a pool participant or a client of a commodity trading advisor, or a counterparty of a swap dealer or major swap participant, an electronic signature executed by the customer, retail forex customer, participant, client, counterparty, swap dealer, or major swap participant will be sufficient, if the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity pool operator, commodity trading advisor, swap dealer, or major swap participant elects generally to accept electronic signatures, acknowledgments or verifications or another Commission rule permits the use of electronic signatures for the purposes listed above; *Provided, however*, That the electronic signature must comply with applicable

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Federal laws and other Commission rules; And, *Provided further*, That the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity pool operator, commodity trading advisor, swap dealer, or major swap participant must adopt and use reasonable safeguards regarding the use of electronic signatures, including at a minimum safeguards employed to prevent alteration of the electronic record with which the electronic signature is associated, after such record has been electronically signed.

[77 FR 66320, Nov. 2, 2012]

§ 1.6 Anti-evasion.

(a) It shall be unlawful to conduct activities outside the United States, including entering into agreements, contracts, and transactions and structuring entities, to willfully evade or attempt to evade any provision of the Commodity Exchange Act as enacted by Subtitle A of the Wall Street Transparency and Accountability Act of 2010 or the rules, regulations, and orders of the Commission promulgated thereunder (*Subtitle A*).

(b) The form, label, and written documentation of an agreement, contract, or transaction, or an entity, shall not be dispositive in determining whether the agreement, contract, or transaction, or entity, has been entered into or structured to willfully evade as provided in paragraph (a) of this section.

(c) An activity conducted outside the United States to evade as provided in paragraph (a) of this section shall be subject to the provisions of Subtitle A.

(d) Notwithstanding the foregoing, no agreement, contract, or transaction structured as a security (including a security-based swap) under the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))) shall be deemed a swap pursuant to this section.

[77 FR 48354, Aug. 13, 2012]

§ 1.7 Books and records requirements for security-based swap agreements.

(a) A person registered as a swap data repository under section 21 of the Commodity Exchange Act and the rules and regulations thereunder: