

(i) An issuer must receive full payment of the hybrid instrument's purchase price, and a purchaser or holder of a hybrid instrument may not be required to make additional out-of-pocket payments to the issuer during the life of the instrument or at maturity; and

(ii) The instrument is not marketed as a futures contract or a commodity option, or, except to the extent necessary to describe the functioning of the instrument or to comply with applicable disclosure requirements, as having the characteristics of a futures contract or a commodity option; and

(iii) The instrument does not provide for settlement in the form of a delivery instrument that is specified as such in the rules of a designated contract market;

(4) The instrument is initially issued or sold subject to applicable federal or state securities or banking laws to persons permitted thereunder to purchase or enter into the hybrid instrument.

### **PART 35—SWAPS IN AN AGRICULTURAL COMMODITY (AGRICULTURAL SWAPS)**

AUTHORITY: 7 U.S.C. 2, 6(c), and 6c(b); and title VII, sec. 723(c)(3), Pub. L. 111–203, 124 Stat. 1376, unless otherwise noted.

SOURCE: 76 FR 49299, Aug. 10, 2011, unless otherwise noted.

#### **§ 35.1 Agricultural swaps, generally.**

(a) Any person or group of persons may offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to, any transaction in interstate commerce that is a swap in an agricultural commodity subject to all provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap; and

(b) In addition to paragraph (a) of this section, any transaction in interstate commerce that is a swap in an agricultural commodity may be transacted on a swap execution facility, designated contract market, or otherwise in accordance with all provisions of the Act, including any Commission rule, regulation, or order thereunder, appli-

cable to any other swap eligible to be transacted on a swap execution facility, designated contract market, or otherwise.

### **PART 36 [RESERVED]**

### **PART 37—SWAP EXECUTION FACILITIES**

#### **Subpart A—General Provisions**

Sec.

- 37.1 Scope.
- 37.2 Applicable provisions.
- 37.3 Requirements and procedures for registration.
- 37.4 Procedures for listing products and implementing rules.
- 37.5 Information relating to swap execution facility compliance.
- 37.6 Enforceability.
- 37.7 Prohibited use of data collected for regulatory purposes.
- 37.8 Boards of trade operating both a designated contract market and a swap execution facility.
- 37.9 Methods of execution for required and permitted transactions.
- 37.10 Process for a swap execution facility to make a swap available to trade.
- 37.11 [Reserved]
- 37.12 Trade execution compliance schedule.

#### **Subpart B—Compliance with Core Principles**

- 37.100 Core Principle 1—Compliance with core principles.

#### **Subpart C—Compliance with Rules**

- 37.200 Core Principle 2—Compliance with rules.
- 37.201 Operation of swap execution facility and compliance with rules.
- 37.202 Access requirements.
- 37.203 Rule enforcement program.
- 37.204 Regulatory services provided by a third party.
- 37.205 Audit trail.
- 37.206 Disciplinary procedures and sanctions.

#### **Subpart D—Swaps Not Readily Susceptible to Manipulation**

- 37.300 Core Principle 3—Swaps not readily susceptible to manipulation.
- 37.301 General requirements.

#### **Subpart E—Monitoring of Trading and Trade Processing**

- 37.400 Core Principle 4—Monitoring of trading and trade processing.