

the swap execution facility was registered by the Commission.

(h) *Delegation of authority.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, upon consultation with the General Counsel or the General Counsel's delegate, authority to notify an applicant seeking registration that its application is incomplete and that it will not be deemed to have been submitted for purposes of the Commission's review, to notify an applicant seeking registration under section 6(a) of the Act that its application is materially incomplete and the running of the 180-day period is stayed, and to notify an applicant seeking temporary registration that its request is granted or denied. The Director 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.

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§ 37.4 Procedures for listing products and implementing rules.

(a) An applicant for registration as a swap execution facility may submit a swap's terms and conditions prior to listing the product as part of its application for registration.

(b) Any swap terms and conditions or rules submitted as part of a swap execution facility's application for registration shall be considered for approval by the Commission at the time the Commission issues the swap execution facility's order of registration.

(c) After the Commission issues the order of registration, a swap execution facility shall submit a swap's terms and conditions, including amendments to such terms and conditions, new rules, or rule amendments pursuant to the procedures under part 40 of this chapter.

(d) Any swap terms and conditions or rules submitted as part of an application to reinstate the registration of a dormant swap execution facility, as defined in § 40.1 of this chapter, shall be considered for approval by the Com-

mission at the time the Commission approves the dormant swap execution facility's reinstatement of registration.

§ 37.5 Information relating to swap execution facility compliance.

(a) *Request for information.* Upon the Commission's request, a swap execution facility shall file with the Commission information related to its business as a swap execution facility in the form and manner and within the time period as the Commission specifies in its request.

(b) *Demonstration of compliance.* Upon the Commission's request, a swap execution facility shall file with the Commission a written demonstration, containing supporting data, information, and documents that it is in compliance with one or more core principles or with its other obligations under the Act or the Commission's regulations as the Commission specifies in its request. The swap execution facility shall file such written demonstration in the form and manner and within the time period as the Commission specifies in its request.

(c) *Equity interest transfer—(1) Equity interest transfer notification.* A swap execution facility shall file with the Commission a notification of each transaction that the swap execution facility enters into involving the transfer of fifty percent or more of the equity interest in the swap execution facility. The Commission may, upon receiving such notification, request supporting documentation of the transaction.

(2) *Timing of notification.* The equity interest transfer notice described in paragraph (c)(1) of this section shall be filed electronically with the Secretary of the Commission at its Washington, DC headquarters at submissions@cftc.gov and the Division of Market Oversight at DMOSubmissions@cftc.gov, at the earliest possible time but in no event later than the open of business ten business days following the date upon which the swap execution facility enters into a firm obligation to transfer the equity interest.

(3) *Rule filing.* Notwithstanding the foregoing, if any aspect of an equity interest transfer described in paragraph

§ 37.6

17 CFR Ch. I (4–1–16 Edition)

(c)(1) of this section requires a swap execution facility to file a rule as defined in part 40 of this chapter, then the swap execution facility shall comply with the requirements of section 5c(c) of the Act and part 40 of this chapter, and all other applicable Commission regulations.

(4) *Certification.* Upon a transfer of an equity interest of fifty percent or more in a swap execution facility, the swap execution facility shall file electronically with the Secretary of the Commission at its Washington, DC headquarters at submissions@cftc.gov and the Division of Market Oversight at DMOSubmissions@cftc.gov, a certification that the swap execution facility meets all of the requirements of section 5h of the Act and the Commission regulations adopted thereunder, no later than two business days following the date on which the equity interest of fifty percent or more was acquired.

(d) *Delegation of authority.* The Commission hereby delegates, until it orders otherwise, the authority set forth in this section to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time. The Director 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.

§ 37.6 Enforceability.

(a) A transaction entered into on or pursuant to the rules of a swap execution facility shall not be void, voidable, subject to rescission, otherwise invalidated, or rendered unenforceable as a result of:

(1) A violation by the swap execution facility of the provisions of section 5h of the Act or this part;

(2) Any Commission proceeding to alter or supplement a rule, term, or condition under section 8a(7) of the Act or to declare an emergency under section 8a(9) of the Act; or

(3) Any other proceeding the effect of which is to:

(i) Alter or supplement a specific term or condition or trading rule or procedure; or

(ii) Require a swap execution facility to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

(b) A swap execution facility shall provide each counterparty to a transaction that is entered into on or pursuant to the rules of the swap execution facility with a written record of all of the terms of the transaction which shall legally supersede any previous agreement and serve as a confirmation of the transaction. The confirmation of all terms of the transaction shall take place at the same time as execution; provided that specific customer identifiers for accounts included in bunched orders involving swaps need not be included in confirmations provided by a swap execution facility if the applicable requirements of § 1.35(b)(5) of this chapter are met.

§ 37.7 Prohibited use of data collected for regulatory purposes.

A swap execution facility shall not use for business or marketing purposes any proprietary data or personal information it collects or receives, from or on behalf of any person, for the purpose of fulfilling its regulatory obligations; *provided, however,* that a swap execution facility may use such data or information for business or marketing purposes if the person from whom it collects or receives such data or information clearly consents to the swap execution facility's use of such data or information in such manner. A swap execution facility shall not condition access to its market(s) or market services on a person's consent to the swap execution facility's use of proprietary data or personal information for business or marketing purposes. A swap execution facility, where necessary for regulatory purposes, may share such data or information with one or more swap execution facilities or designated contract markets registered with the Commission.

§ 37.8 Boards of trade operating both a designated contract market and a swap execution facility.

(a) An entity that intends to operate both a designated contract market and