

§ 38.6

the filing of a rule as defined in part 40 of this chapter shall comply with the requirements of 5c(c) of the Act and part 40 of this chapter, and all other applicable Commission regulations.

(d) *Delegation of authority.* The Commission hereby delegates, until it orders otherwise, the authority set forth in paragraph (b) of 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.

[77 FR 36698, June 19, 2012]

§ 38.6 Enforceability.

An agreement, contract or transaction entered into on or pursuant to the rules of a designated contract market shall not be void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable as a result of:

(a) A violation by the designated contract market of the provisions of section 5 of the Act or this part 38; or

(b) Any Commission proceeding to alter or supplement a rule, term or condition under section 8a(7) of the Act, to declare an emergency under section 8a(9) of the Act, or any other proceeding the effect of which is to alter, supplement, or require a designated contract market to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

§ 38.7 Prohibited use of data collected for regulatory purposes.

A designated contract market may 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 designated contract market 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

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designated contract market's use of such data or information in such manner. A designated contract market, where necessary, for regulatory purposes, may share such data or information with one or more designated contract markets or swap execution facilities registered with the Commission. A designated contract market may not condition access to its trading facility on a market participant's consent to the use of proprietary data or personal information for business or marketing purposes.

[77 FR 36699, June 19, 2012]

§ 38.8 Listing of swaps on a designated contract market.

(a) A designated contract market that lists for the first time a swap contract for trading on its contract market must, either prior to or at the time of such listing, file with the Commission a written demonstration detailing how the designated contract market is addressing its self-regulatory obligations and is fulfilling its statutory and regulatory obligations with respect to swap transactions.

(b)(1) Prior to listing swaps for trading on or through a designated contract market, each designated contract market must obtain from the Commission a unique, alphanumeric code assigned to the designated contract market by the Commission for the purpose of identifying the designated contract market with respect to unique swap identifier creation. (2) Each designated contract market must generate and assign a unique swap identifier at, or as soon as technologically practicable following, the time of execution of the swap, in a manner consistent with the requirements of part 45.

[77 FR 36699, June 19, 2012]

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

(a) A board of trade that operates a designated contract market and that intends to also operate a swap execution facility must separately register, pursuant to the swap execution facility registration requirements set forth in

part 37 of this chapter, and on an ongoing basis, comply with the core principles under section 5h of the Act, and the swap execution facility rules under part 37 of this chapter.

(b) A board of trade that operates both a designated contract market and a swap execution facility, and that uses the same electronic trade execution system for executing and trading swaps that it uses in its capacity as a designated contract market, must clearly identify to market participants for each swap whether the execution or trading of such swap is taking place on the designated contract market or on the swap execution facility.

[77 FR 36699, June 19, 2012]

§ 38.10 Reporting of swaps traded on a designated contract market.

With respect to swaps traded on and/or pursuant to the rules of a designated contract market, each designated contract market must maintain and report specified swap data as provided under parts 43 and 45 of this chapter.

[77 FR 36700, June 19, 2012]

§ 38.11 Trade execution compliance schedule.

(a) A swap transaction shall be subject to the requirements of section 2(h)(8) of the Act upon the later of:

(1) The applicable deadline established under the compliance schedule provided under § 50.25(b) of this chapter; or

(2) Thirty days after the available-to-trade determination submission or certification for that swap is, respectively, deemed approved under § 40.5 of this chapter or deemed certified under § 40.6 of this chapter.

(b) Nothing in this section shall prohibit any counterparty from complying voluntarily with the requirements of section 2(h)(8) of the Act sooner than as provided in paragraph (a) of this section.

[78 FR 33630, June 4, 2013]

§ 38.12 Process for a designated contract market to make a swap available to trade.

(a)(1) *Required submission.* A designated contract market that makes a swap available to trade in accordance

with paragraph (b) of this section, shall submit to the Commission its determination with respect to such swap as a rule, as that term is defined by § 40.1 of this chapter, pursuant to the procedures under part 40 of this chapter.

(2) *Listing requirement.* A designated contract market that makes a swap available to trade must demonstrate that it lists or offers that swap for trading on its trading system or platform.

(b) *Factors to consider.* To make a swap available to trade, for purposes of section 2(h)(8) of the Act, a designated contract market shall consider, as appropriate, the following factors with respect to such swap:

(1) Whether there are ready and willing buyers and sellers;

(2) The frequency or size of transactions;

(3) The trading volume;

(4) The number and types of market participants;

(5) The bid/ask spread; or

(6) The usual number of resting firm or indicative bids and offers.

(c) *Applicability.* (1) Upon a determination that a swap is available to trade on any designated contract market or swap execution facility pursuant to part 40 of this chapter, all other designated contract markets and swap execution facilities shall comply with the requirements of section 2(h)(8)(A) of the Act in listing or offering such swap for trading.

(d) *Removal—(1) Determination.* The Commission may issue a determination that a swap is no longer available to trade upon determining that no swap execution facility or designated contract market lists such swap for trading.

(2) *Delegation of Authority.* (i) 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, the authority to issue a determination that a swap is no longer available to trade.

(ii) The Director may submit to the Commission for its consideration any matter that has been delegated in this section. Nothing in this section prohibits the Commission, at its election,