

demonstrate that it satisfies the registration requirements set forth in § 48.7, (limited application) the foreign board of trade must:

(i) Specifically identify the information or documentation previously submitted;

(ii) Identify the specific registration requirements set forth in § 48.7 that are satisfied by such information or documentation; and

(iii) Certify that the information remains accurate and current.

(2) If the foreign board of trade wishes to rely on information and documentation previously submitted in hard copy in connection with its application for no-action relief, the foreign board of trade must also resubmit the identified information or documentation. A foreign board of trade that has submitted a complete application for no-action relief that is pending as of February 21, 2012 may also apply for registration pursuant to these limited application procedures.

(c) A foreign board of trade operating pursuant to existing no-action relief must submit a limited application for registration, determined in good faith by the applicant to be complete, within 180 days of February 21, 2012. If, at any time after August 20, 2012 but before a limited application is approved or disapproved, the Commission determines that the application is materially incomplete, the Commission may, after providing the foreign board of trade with notice and an opportunity to respond to the determination of incompleteness, withdraw the existing no-action relief if the Commission determines that the application cannot be made complete in a timely manner. The foreign board of trade may continue to operate pursuant to the existing no-action relief, subject to the terms and conditions contained therein, August 20, 2012, while the Commission is reviewing its application, and until the Commission approves or disapproves the application or otherwise withdraws the existing no-action relief. The no-action relief is automatically withdrawn upon issuance of an Order of Registration or upon disapproval.

§ 48.7 Requirements for registration.

An applicant for registration must demonstrate that it and, where applicable, its clearing organization meet the following requirements. The registration requirements applicable to clearing organizations may alternatively be met by demonstrating that the clearing organization is registered and in good standing with the Commission as a derivatives clearing organization. The Commission, in its discretion, may request additional information and documentation in connection with an application for registration and an applicant for registration must provide promptly any such additional information or documentation. The Commission, in its discretion, also may impose additional registration requirements that the Commission deems necessary after appropriate notice and opportunity to respond.

(a) Foreign Board of Trade and Clearing Membership:

(1) The members and other participants of the foreign board of trade and its clearing organization are fit and proper and meet appropriate financial and professional standards;

(2) The foreign board of trade and its clearing organization have and enforce provisions to minimize and resolve conflicts of interest; and

(3) The foreign board of trade and its clearing organization have and enforce rules prohibiting the disclosure, both during and subsequent to service on a board or committee, of material non-public information obtained as a result of a member's or other participant's performance of duties as a member of their respective governing boards and significant committees.

(b) The Automated Trading System:

(1) The trading system complies with Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commissions,

(2) The trade matching algorithm matches trades fairly and timely,

(3) The audit trail captures all relevant data, including changes to orders, and audit trail data is securely maintained and available for an adequate time period,

§ 48.7

17 CFR Ch. I (4–1–16 Edition)

(4) Adequate and appropriate trade data is made available to users and the public,

(5) The trading system has demonstrated reliability,

(6) Access to the trading system is secure and protected,

(7) There are adequate provisions for emergency operations and disaster recovery,

(8) Trading data is backed up to prevent loss of data, and

(9) Only those futures, option or swap contracts that have been identified to the Commission in the foreign board of trade's application for registration or permitted to be made available for trading by direct access pursuant to the procedures set forth in § 48.10 of this part are made available for trading by direct access.

(c) Terms and Conditions of Contracts to Be Made Available in the United States.

(1) Contracts must meet the following standards:

(i) Contracts must be futures, option or swap contracts that would be eligible to be traded on a designated contract market;

(ii) Contracts must be cleared;

(iii) Contracts must not be prohibited from being traded by United States persons; and

(iv) Contracts must not be readily susceptible to manipulation.

(2) Foreign futures and option contracts on non-narrow-based security indexes must have been certified by the Commission pursuant to the procedures set forth in § 30.13 of this chapter.

(3) Contracts that have the following characteristics must be specifically identified as having such characteristics:

(i) Contracts that are linked to a contract listed for trading on a registered entity as defined in section 1a(40) of the Act, and

(ii) Contracts that have any other relationship with a contract listed for trading on a registered entity (for example, if both the foreign board of trade's and the registered entity's contract settle to the price of the same third party-constructed index).

(d) Settlement and Clearing:

(1) The clearing organization observes the Recommendations for Cen-

tral Counterparties or is registered with the Commission as a derivatives clearing organization, and

(2) The clearing organization is in good regulatory standing in its home country jurisdiction.

(e) The Regulatory Regimes Governing the Foreign Board of Trade and the Clearing Organization:

(1) The regulatory authorities provide comprehensive supervision and regulation of the foreign board of trade, the clearing organization, and the type of contracts to be made available through direct access that is comparable to the comprehensive supervision and regulation provided by the Commission to designated contract markets, derivatives clearing organizations and such contracts. That is, the regulatory authorities support and enforce regulatory objectives in the oversight of the foreign board of trade, clearing organization and the type of contracts that the foreign board of trade wishes to make available through direct access that are substantially equivalent to the regulatory objectives supported and enforced by the Commission in its oversight of designated contract markets, derivatives clearing organizations, and such products.

(2) The regulatory authorities engage in ongoing regulatory supervision and oversight of the foreign board of trade and its trading system, the clearing organization and its clearing system, and the members, intermediaries and other participants of the foreign board of trade and clearing organization, with respect to, among other things, market integrity, customer protection, clearing and settlement and the enforcement of the rules of the foreign board of trade and the clearing organization.

(3) The regulatory authorities have the power to share information directly with the Commission, upon request, including information necessary to evaluate the continued eligibility of the foreign board of trade for registration and to audit for compliance with the terms and conditions of the registration.

(4) The regulatory authorities have the power to intervene in the market.

(f) The Rules of the Foreign Board of Trade and the Clearing Organization and Enforcement Thereof:

Commodity Futures Trading Commission

§ 48.7

(1) The foreign board of trade and its clearing organization have implemented and enforce rules to ensure compliance with the requirements of registration contained in this part;

(2) The foreign board of trade and its clearing organization have the capacity to detect, investigate, and sanction persons who violate their respective rules;

(3) The foreign board of trade and the clearing organization (or their respective regulatory authorities) have implemented and enforce disciplinary procedures that empower them to recommend and prosecute disciplinary actions for suspected rule violations, impose adequate sanctions for such violations, and provide adequate protections to charged parties pursuant to fair and clear standards;

(4) The foreign board of trade and its clearing organization are authorized by rule or by contractual agreement to obtain, from members and other participants, any information and cooperation necessary to conduct investigations, to effectively enforce their respective rules, and to ensure compliance with the conditions of registration;

(5) The foreign board of trade and its clearing organization have sufficient compliance staff and resources, including by delegation and/or outsourcing to a third party, to fulfill their respective regulatory responsibilities, including appropriate trade practice surveillance, real time market monitoring, market surveillance, financial surveillance, protection of customer funds, enforcement of clearing and settlement provisions and other compliance and regulatory responsibilities;

(6) The foreign board of trade has implemented and enforces rules with respect to access to the trading system and the means by which the connection thereto is accomplished;

(7) The foreign board of trade's audit trail captures and retains sufficient order and trade-related data to allow its compliance staff to detect trading and market abuses and to reconstruct all transactions within a reasonable period of time;

(8) The foreign board of trade has implemented and enforces rules prohibiting fraud and abusive trading prac-

tices including, but not limited to, wash sales and trading ahead;

(9) The foreign board of trade has the capacity to detect and deter, and has implemented and enforces rules relating to, market manipulation, attempted manipulation, price distortion, and other disruptions of the market; and

(10) The foreign board of trade has and enforces rules and procedures that ensure a competitive, open and efficient market and mechanism for executing transactions.

(g) Information Sharing:

(1) The regulatory authorities governing the activities of the foreign board of trade and the clearing organization are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding, or otherwise ensure that substitute information sharing arrangements that are satisfactory to the Commission are in place;

(2) The regulatory authorities governing the activities of the foreign board of trade and the clearing organization are signatories to the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations or otherwise commit, in writing, to share the types of information contemplated by the International Information Sharing Memorandum of Understanding and Agreement with the Commission;

(3) The foreign board of trade has executed the International Information Sharing Memorandum of Understanding and Agreement; and

(4) Pursuant to the conditions described in § 48.8(a)(6), the foreign board of trade and clearing organization agree to provide directly to the Commission, upon request, any information necessary, in the discretion of the Commission, to evaluate the continued eligibility and appropriateness of the foreign board of trade and the clearing organization, or their respective members or other participants for registration, to audit for and enforce compliance with the requirements and conditions of the registration, or to enable the Commission to carry out its duties under the Act and Commission regulations.