



October 22, 2015

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

**Re: Petition for Rulemaking to Amend Certain CFTC Regulations in Parts 1 (General Regulations under the Commodity Exchange Act), 37 (Swap Execution Facilities), 38 (Designated Contract Markets), 39 (Derivatives Clearing Organizations, Subpart B – Compliance with Core Principles) and 43 (Real-Time Public Reporting)**

Dear Mr. Kirkpatrick:

Managed Funds Association<sup>1</sup> (“MFA”) respectfully petitions the Commodity Futures Trading Commission (the “**Commission**” or “**CFTC**”) under Commission regulation 13.2 to amend certain provisions in Parts 1, 37, 38, 39 and 43 of the Commission’s regulations.

For the reasons set forth below, we request that the Commission amend certain provisions of its regulations related to swap trading rules on registered swap execution facilities (“**SEFs**”) and designated contract markets (“**DCMs**”). Our proposed amendments would: (1) codify existing CFTC staff guidance around the implementation of the Commission’s impartial access requirements; (2) codify existing CFTC staff guidance around the implementation of the Commission’s straight-through processing (“**STP**”) requirements; (3) clearly prohibit post-trade name disclosure by SEFs for swaps that are executed anonymously; (4) facilitate SEF/DCM execution of package transactions by requiring the package transaction as a whole to become “made available to trade” (“**MAT**”) in order to be subject to the CFTC’s trade execution requirement; (5) provide a mandatory public comment period for every MAT determination submission by a SEF/DCM under Part 40 of the Commission’s regulations; (6) establish a clear process for determining when a swap product is no longer available to trade on a SEF/DCM; (7) codify existing CFTC staff guidance and no-action relief around rejection of swaps from clearing

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<sup>1</sup> MFA represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, the Americas, Australia and many other regions where MFA members are market participants.

and resubmission for operational and clerical errors; (8) clarify the order interaction requirements between different SEF trading protocols; and (9) modify the definition of “block trade” in Part 43 of the Commission’s regulations to authorize on-SEF execution of a block trade as a “permitted transaction” as defined in section 37.9(c) in order to facilitate pre-execution credit checks of block trades that are intended to be cleared.

The information required by Commission regulation 13.2 follows. In describing certain amendments, we refer you to Appendix A to this letter for the proposed textual changes that are marked against the final rule text.

### **Nature of Petitioner’s Interest**

MFA has over 3,000 members from firms engaging in many alternative investment strategies all over the world. MFA’s members are among the most sophisticated institutional investors and play an important role in our financial system. They are active participants in the commodity and securities markets, including over-the-counter (“OTC”) derivatives markets. MFA supported the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Dodd-Frank Act**”).<sup>2</sup> In particular, MFA has consistently supported the Dodd-Frank Act’s Title VII reforms to the OTC derivatives markets that decrease systemic risk, increase transparency, and promote an open, competitive, and level playing field. We welcomed the market’s transition to central clearing for liquid, standardized swaps that occurred over the course of 2013, and actively engaged in the market’s evolution of trading liquid, standardized, cleared swaps on SEFs and DCMs that commenced in early 2014. Nearly two years after the launch of the SEF marketplace, MFA is concerned that the swaps market remains bifurcated between “dealer-to-dealer” SEFs that exclude most buy-side firms and “dealer-to-customer” SEFs. MFA is also concerned with the SEF trading challenges posed by certain types of package transactions that are expected to continue after the existing CFTC staff no-action relief expires.

We are proposing rule amendments to certain provisions in Parts 1, 37, 38, 39 and 43 of the Commission’s regulations to offer suggested rule fixes based on MFA members’ SEF trading experiences to date and the “lessons learned” through the implementation process.

### **Proposed Rule Amendments with Supporting Arguments**

#### **1. Codify Existing CFTC Staff Guidance: Impartial Access**

- Revise § 37.202(c) (*Limitations on access*) by adding new clauses (2) and (3) as set forth in Appendix A, at page 12.

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<sup>2</sup> Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010), available at: <http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/html/PLAW-111publ203.htm>.

### Explanation and Supporting Arguments for the Proposed Amendments

MFA's proposed amendments to section 37.202(c) would codify existing staff guidance to prohibit the use of enablement mechanisms and breakage agreements for swaps that are intended to be cleared on SEFs.<sup>3</sup> A SEF that requires or permits such arrangements imposes barriers to the buy-side's access to that SEF and contravenes the Commission's impartial access requirements. In addition, our proposed amendments prohibit a SEF from limiting access to certain types of eligible contract participants in a discriminatory manner. Such access limitations could be based on the manner in which certain types of eligible contract participants typically interact in the market, anticipated levels of trading activity, or entity registration status. These and other status-based access criteria also act as artificial barriers to the buy-side's access to SEFs.

#### **2. Codify Existing CFTC Staff Guidance: STP**

- Revise § 1.73 (*Clearing futures commission merchant risk management*) to read as set forth in Appendix A, at page 31.
- Revise § 1.74 (*Futures commission merchant acceptance for clearing*) to read as set forth in Appendix A, at pages 31 and 32.
- Revise § 39.12(b)(7) (*Time frame for clearing*) to read as set forth in Appendix A, at page 35.

### Explanation and Supporting Arguments for the Proposed Amendments

MFA's proposed amendments to section 1.73 would codify existing CFTC staff guidance that any order that is screened in accordance with paragraph (a)(2)(i) or (ii) and falls within the pre-execution risk-based limits of the clearing futures commission merchant ("FCM") would be deemed accepted for clearing by the FCM and thereby subject to a guarantee by such FCM upon execution. In addition, our proposed amendments would clarify that a clearing FCM may not reject a screened trade for clearing that falls within the clearing FCM's pre-execution risk-based limits.

Consistent with current CFTC staff guidance, MFA's proposed amendments to section 1.74 would establish an outer boundary of 60 seconds after submission of a trade to the clearing FCM for acceptance for clearing. Our proposed amendments would retain the current timing standard of "as quickly as technologically practicable if fully automated systems were used" ("ASATP") to require timing reductions for clearing acceptance from the 60-second outer boundary that continuing improvements in technology will enable.

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<sup>3</sup> See "Division of Clearing and Risk, Division of Market Oversight and Division of Swap Dealer and Intermediary Oversight Guidance on Application of Certain Commission Regulations to Swap Execution Facilities", issued Nov. 14, 2013.

Consistent with current CFTC staff guidance, MFA's proposed amendments to section 39.12(b)(7) would establish an outer boundary of 10 seconds after submission of any trade for clearing to a DCO (whether or not the trade is executed on or subject to the rules of a SEF or DCM) for the DCO to accept or reject a trade for clearing. Our proposed amendments would retain the ASATP standard to require timing reductions for clearing acceptance from the 10-second outer boundary that continuing technology improvements will enable.

### 3. Clearly Prohibit Post-Trade Name Give-up

- Add new paragraph (b) in § 37.7 (*Prohibited use of data collected for regulatory purposes*):

(b) A swap execution facility shall not, and shall ensure any third-party service provider it uses does not, disclose to either party to a transaction the identity of its counterparty if the transaction was originally executed anonymously. A swap execution facility shall not condition access to its market(s) or market services on a person's consent to the use of any service provided by any third party if use of that service could result in the disclosure of the identity of any counterparty to a transaction that was executed anonymously.

#### Explanation and Supporting Arguments for the Proposed Amendments

MFA strongly believes that the legacy practice of post-trade name disclosure or "name give-up" on any SEF that offers anonymous execution of swap transactions contravenes the intent of both: (1) the impartial access mandate under Title VII of the Dodd-Frank Act by deterring participation of eligible buy-side firms on such SEFs, and (2) the Commission's important revision to Section 49.17(f)(2) of its final rules on "Swap Data Repositories: Registration Standards, Duties and Core Principles".<sup>4</sup> As explained in MFA's position paper on name give-up, this practice has no legitimate business justification in cleared swaps markets.<sup>5</sup> Prior justifications concerning the need to assess counterparty creditworthiness and credit-related risk management are no longer relevant, as central clearing with STP eliminates bilateral counterparty credit risk. Given that inter-dealer broker ("**IDB**") SEFs offer anonymous trade

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<sup>4</sup> CFTC Final Rule on "Swap Data Repositories: Registration Standards, Duties and Core Principles", 76 Fed. Reg. 54538 (Sept. 1, 2011); amended by CFTC Interim Final Rule on "Swap Data Repositories - Access to SDR Data by Market Participants", 79 Fed. Reg. 16672 (March 26, 2014) (providing that the data and information maintained by the registered swap data repository ("**SDR**") that may be accessed by either counterparty to a particular swap shall not include the identity or the legal entity identifier of the other counterparty to the swap, or the other counterparty's clearing member for the swap, if the swap is executed anonymously on a swap execution facility or designated contract market, and cleared in accordance with CFTC regulations).

<sup>5</sup> See "MFA Position Paper: Why Eliminating Post-Trade Name Disclosure will Improve the Swaps Market", issued on March 31, 2015, available at: <https://www.managedfunds.org/wp-content/uploads/2015/04/MFA-Position-Paper-on-Post-Trade-Name-Disclosure-Final.pdf>.

execution, MFA strongly believes that such cleared swaps should remain anonymous throughout the trade cycle for all participants on such SEFs.

If left to market dynamics to resolve the name give-up issue without regulation to prohibit the practice, MFA fears that other market participants will exert influence on IDB SEFs to resist attempts to dismantle it. In our view, the unintended consequence will be that U.S. swaps markets will maintain a fragmented, two-tier structure. This structure largely confines buy-side firms to trading via the request for quote (“**RFQ**”) trading protocol on the dominant dealer-to-customer SEFs. This outcome falls short of effectively implementing the impartial access mandate for SEFs and the Dodd-Frank Act goals of improving transparency, efficiency and competition in swaps trading.

#### **4. More Clearly Address Package Transactions in MAT Determination Process**

- Revise § 37.9 (*Methods of execution for required and permitted transactions*) to read as set forth in Appendix A, at pages 7 and 8.
- Revise § 37.10 (*Process for a swap execution facility to make a swap available to trade*) to read as set forth in Appendix A, at pages 8 and 9.
- Revise § 37.12 (*Trade execution compliance schedule*) to read as set forth in Appendix A, at page 9.
- Revise § 38.11 (*Trade execution compliance schedule*) to read as set forth in Appendix A, at page 28.
- Revise § 38.12 (*Process for a designated contract market to make a swap available to trade*) to read as set forth in Appendix A, at page 29.

#### Explanation and Supporting Arguments for the Proposed Amendments

MFA’s proposed amendments to section 37.9 would revise the definition of a “required transaction” to include “any transaction involving a stand-alone swap or any package transaction that is subject to the trade execution requirement in section 2(h)(8) of the [Commodity Exchange] Act”. Our revised definition would also define a “package transaction” as follows:

Package transaction means a transaction involving two or more instruments: (1) that is executed between two or more counterparties; (2) that is priced or quoted as one economic transaction with simultaneous or near simultaneous execution of all components; (3) where the execution of each component is contingent upon the execution of all other components; and (4) where the risk of the offsetting components is reasonably equivalent.

A transaction meeting this definition would not be deemed a required transaction unless the package transaction as a whole has become subject to the Commission’s trade execution requirement in section 2(h)(8) of the Commodity Exchange Act, as amended (“**CEA**”). If the

package transaction as a whole has not become subject to the Commission's trade execution requirement, it would be a "permitted transaction" and thus would not be restricted to the order book or RFQ methods of execution.

In an earlier comment letter submitted prior to implementation of the final SEF rules, MFA recommended to the Commission that it should expand the definition of "permitted transaction" to also include package transactions and other transactions that may not be suitable for SEF execution.<sup>6</sup> However, based on the implementation experiences of MFA members, we believe the fundamental issue for CFTC rule fine-tuning is a transaction-level determination of liquidity of the whole package transaction under the Commission's MAT factors in section 37.10. This approach would avoid the need for CFTC staff to resort to issuing serial no-action relief as the industry continues to work on the remaining execution challenges and infrastructure solutions for many types of package transactions.

Through MFA's proposed amendments to section 37.10, we propose to require SEFs to make MAT determinations separately for a given swap when executed on a stand-alone basis and for different types of package transactions that include such a swap. This differs from the current process, under which a MAT determination has implications not just for the execution of a given swap on a stand-alone basis, but also for all package transactions that include such a swap. Both the liquidity profile and the ability of market infrastructure to facilitate trading of swaps executed on an outright or stand-alone basis versus as part of a package transaction can vary widely. Therefore, our changes to section 37.10 would require SEFs to apply the CFTC's MAT determinations criteria separately at the package level to avoid execution challenges and the need for extended or permanent staff no-action relief from the trade execution requirement for certain types of package transactions. We also propose to make conforming changes to section 37.12 to account for any package transaction as a whole that may become subject to the Commission's trade execution requirement in section 2(h)(8) of the CEA.

## 5. Provide Public Comment Period for MAT Determinations

- Revise § 37.10(a)(1) (*Required submission*) to read as set forth in Appendix A, at pages 8 and 9.
- Revise § 38.12(a)(1) (*Required submission*) to read as set forth in Appendix A, at pages 29 and 30.

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<sup>6</sup> See MFA's comments on the Commission's Notice of Proposed Rulemaking on "Core Principles and Other Requirements for Swap Execution Facilities", 76 Fed. Reg. 1214 (Jan. 7, 2011), available at: <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=31242>.



### Explanation and Supporting Arguments for the Proposed Amendments

MFA's proposed amendments would require a public comment period with respect to each MAT determination submission by a SEF or DCM. We believe a mandatory public comment period would provide market participants with a critical opportunity to inform the Commission as to a swap product's suitability and the industry's technological and operational readiness to move the product from the OTC market to a SEF or DCM platform. Public comments would also lend needed objectivity to the SEF/DCM-initiated MAT determination process. In this regard, a mandatory public comment period would serve as an important "check and balance" mechanism on every SEF/DCM submission, providing a broader range of perspectives for the Commission's consideration in deciding whether to approve or disapprove a SEF/DCM submission. We also suggest that our proposed amendments would enable the Commission to perform a more meaningful oversight role, thereby moving the Commission's current process a step closer in comparability to the proposed processes of other regulators.

#### **6. Establish a Process for de-MAT Determinations**

- Revise § 37.10(d)(1) (*Removal*) to read as set forth in Appendix A, at page 9.
- Revise § 38.12(d)(1) (*Removal*) to read as set forth in Appendix A, at pages 29 and 30.

### Explanation and Supporting Arguments for the Proposed Amendments

MFA's proposed amendments would establish a clear process for determining when a stand-alone swap or package transaction is no longer available to trade on a SEF or DCM (a "**de-MAT determination**"), based on the Commission's current six MAT factors.<sup>7</sup> We believe the Commission should administer this process by retaining its authority to make such a determination on an annual basis by undertaking a targeted review of a subset of available-to-trade swaps. We suggest that this subset could comprise the bottom 10% of the least actively traded available-to-trade swap products based on trading data. The Commission's targeted annual assessment of any available-to-trade swap in this subset would enable the Commission to determine whether such swap continues to be "made available to trade" based on a consideration of the six MAT factors. It would also introduce some comparability with the annual reassessment of the liquidity of a class of derivatives (or a sub-class thereof) by the European Securities and Markets Authority ("**ESMA**") for purposes of the transparency requirements for derivatives under the EU's Markets in Financial Instruments Directive and related Regulation ("**MiFID II/MiFIR**").<sup>8</sup> In addition to the Commission's annual assessment, we propose that the

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<sup>7</sup> See CFTC Regulations § 37.10(b) (SEFs) and § 38.12(b) (DCMs) for the six MAT factors.

<sup>8</sup> See ESMA's Final Report on Draft Regulatory and Implementing Technical Standards under MiFID II/MiFIR published on 28 September 2015, at section 2.2, para. 21.

Commission should assess the available-to-trade status of a swap if the Commission receives notice of de-listing submissions from at least two SEFs or DCMs for that swap.<sup>9</sup> Consistent with our request for MAT determinations, our proposed amendments would also require a public comment period to further inform the Commission's consideration of any de-MAT determination.

As we explained in our prior comment letter, we believe that a separate de-MAT determination process would serve as an important check-and-balance mechanism, rather than a process that relies exclusively on determinations of SEFs/DCMs.<sup>10</sup> If none of the six MAT factors support a determination that a stand-alone swap or a package transaction is made available to trade, as confirmed objectively by the Commission's broader view of market trading data for the product in question, the Commission should issue a public de-MAT determination order that will suspend the trade execution requirement for that product. That suspension would apply universally to all SEFs and DCMs.

#### **7. Codify Existing CFTC Staff Guidance and No-Action Relief: Rejection from Clearing and Resubmission**

- Add new § 37.13 (*Re-execution of trades due to operational and clerical error*) to read as set forth in Appendix A, at pages 9 through 11.
- Add new paragraph (e) to § 37.200 (*Core Principle 2 – Compliance with rules*), to read as set forth in Appendix A, at pages 11 and 12.
- Conforming change in § 37.203 (*Rule enforcement program*), to read as set forth in Appendix A, at page 13.
- Revise § 38.150 (*Core Principle 2*) to read as set forth in Appendix A, at page 30.
- Revise § 39.12(b)(7) (*Time frame for clearing*) to read as set forth in Appendix A, at page 35.

#### Explanation and Supporting Arguments for the Proposed Amendments

MFA's proposed amendments would codify, with clarifying modifications, existing CFTC staff no-action letter 15-24 ("**NAL 15-24**") to authorize pre-arranged transactions in the following circumstances set forth in the first condition of this relief: "(1) the correction of an operational or clerical error or omission made by a SEF, DCM, one of the counterparties, or an agent of one of the counterparties that causes a trade to be rejected and void *ab initio*, or (2) for the purpose of

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<sup>9</sup> Under CFTC Regulation § 40.6(a), the Commission would receive notice that a SEF or DCM has de-listed a swap through a submission, submitted in compliance with §§ 40.6(a)(1) and (2) and 40.6(a)(7).

<sup>10</sup> See MFA's comments on the Commission's Further Notice of Proposed Rulemaking on "Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade", 76 Fed. Reg. 77728 (Dec. 14, 2011), at p. 4, available at: <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=56968>.



offsetting swaps carried on a DCO's books where a clerical or operational error or omission made by the SEF, DCM, counterparty, or an agent of the counterparty is not identified until after the trade has been cleared. In the latter situation, a new transaction that corrects the errors in the original transaction also is subject to this relief."<sup>11</sup> Our proposed amendments would define a "new correcting trade" in either scenario as "a new pre-arranged trade executed on or subject to the rules of a SEF with terms and conditions that match the terms and conditions of an erroneous trade, other than any operational or clerical error and the time of execution, that is executed as a result of an erroneous trade". In Appendix A, we have annotated our other proposed amendments for your reference to reflect other conditions in NAL 15-24. MFA's proposed amendments would also further codify the consequence of an intended-to-be-cleared swap being rejected from clearing (*i.e.*, void *ab initio*), which MFA strongly supports.<sup>12</sup>

We note that ESMA included both void *ab initio* and a resubmission procedure in its recently published regulatory technical standards under the EU's MiFID II/MiFIR. As a result, codifying these points would further facilitate harmonization between SEFs/DCMs and MiFID II trading venues.

## 8. Clarify RFQ and Order Interaction

- Revise § 37.9(a)(3)(i) (*Request for quote system*) as set forth in Appendix A, at page 7.

### Explanation and Supporting Arguments for the Proposed Amendments

MFA's proposed amendments to section 37.9(a)(3)(i) involve the Commission's requirement that firm bids and offers must be taken into account and communicated to an RFQ requester along with the RFQ responses. These amendments would further clarify that any firm bid or offer that is communicated to an RFQ requester in this situation must be provided in an executable form so that the RFQ requester can easily access such price if so desired. In addition, as SEFs continue to make innovations in trading protocols, it is important that the order interaction requirement not be construed so narrowly as to render it inapplicable for these new trading protocols. As a result, these amendments would clarify that a SEF must communicate to an RFQ requester any firm bid or offer pertaining to the same instrument resting on any of the SEF's markets, trading systems or platforms. We believe these amendments promote pre-trade price transparency by ensuring the RFQ requester has the ability to view and access competitive firm quotes anywhere on the SEF.

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<sup>11</sup> See CFTC No-Action Letter 15-24, "No-Action Relief for Swap Execution Facilities and Designated Contract Markets in Connection with Swaps with Operational or Clerical Errors Executed on a Swap Execution Facility or Designated Contract Market", issued April 22, 2015, at p. 5.

<sup>12</sup> See CFTC "Staff Guidance on Swaps Straight-Through Processing", issued Sept. 26, 2013.

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**9. Codify Existing CFTC Staff No-Action Relief: Eliminate “Occurs Away” Requirement for Authorized On-SEF Execution of Block Trades**

- Revise § 43.2 (*Definitions – Block trade*) to read as set forth in Appendix A, at page 36.

Explanation and Supporting Arguments for the Proposed Amendments

MFA’s proposed amendments would codify, with modification, existing CFTC staff no-action letter 14-118 by eliminating the “occurs away” requirement for block trades.<sup>13</sup> More specifically, our proposed amendments would expressly authorize on-SEF execution of any block trade as a permitted transaction. By doing so, a block trade can be executed by RFQ to 1 or by voice to facilitate the requisite pre-execution credit checks of block trades that are intended to be cleared.

MFA respectfully petitions the Commission to amend Parts 1, 37, 38, 39 and 43 as described above. Please do not hesitate to contact the undersigned or Laura Harper Powell at (202) 730-2600 with any questions the Commission or its staff might have regarding this petition.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell  
Executive Vice President, Managing Director &  
General Counsel

cc: The Hon. Timothy G. Massad, Chairman  
The Hon. Sharon Y. Bowen, Commissioner  
The Hon. J. Christopher Giancarlo, Commissioner

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<sup>13</sup> See CFTC No-Action Letter 14-118, “No-Action Relief for Swap Execution Facilities from Certain ‘Block Trade’ Requirements in Commission Regulation 43.2”, issued September 19, 2014.

## Appendix A

### SEF Rules

#### § 37.1 Scope.

The provisions of this part shall apply to every swap execution facility that is registered or is applying to become registered as a swap execution facility under section 5h of the Commodity Exchange Act (“the Act”); provided, however, nothing in this provision affects the eligibility of swap execution facilities to operate under the provisions of parts 38 or 49 of this chapter.

#### § 37.2 Applicable provisions.

A swap execution facility shall comply with the requirements of this part and all other applicable Commission regulations, including § 1.60 and part 9 of this chapter, and including any related definitions and cross-referenced sections.

#### § 37.3 Requirements and procedures for registration.

(a) Requirements for registration.  
(1) Any person operating a facility that offers a trading system or platform in which more than one market participant has the ability to execute or trade swaps with more than one other market participant on the system or platform shall register the facility as a swap execution facility under this part or as a designated contract market under part 38 of this chapter.

(2) Minimum trading functionality. A swap execution facility shall, at a minimum, offer an Order Book as defined in paragraph (a)(3) of this section.

(3) Order book means:

(i) An electronic trading facility, as that term is defined in section 1a(16) of the Act;  
(ii) A trading facility, as that term is defined in section 1a(51) of the Act; or  
(iii) A trading system or platform in which all market participants have the ability to enter multiple bids and offers, observe or receive bids and offers entered by other market participants, and transact on such bids and offers.

(b) Procedures for full registration.

(1) An applicant requesting registration as a swap execution facility shall:  
(i) File electronically a complete Form SEF as set forth in appendix A to this part, or any successor forms, and all information and documentation described in such forms with the Secretary of the Commission in the form and manner specified by the Commission;  
(ii) Provide to the Commission, upon the Commission's request, any additional information and documentation necessary to review an application; and  
(iii) Request from the Commission a unique, extensible, alphanumeric code for the

purpose of identifying the swap execution facility pursuant to part 45 of this chapter.

(2) Request for confidential treatment.

(i) An applicant requesting registration as a swap execution facility shall identify with particularity any information in the application that will be subject to a request for confidential treatment pursuant to § 145.9 of this chapter.

(ii) Section 40.8 of this chapter sets forth those sections of the application that will be made publicly available, notwithstanding a request for confidential treatment pursuant to § 145.9 of this chapter.

(3) Amendment of application prior or subsequent to full registration. An applicant amending a pending application for registration as a swap execution facility or requesting an amendment to an order of registration shall file an amended application electronically with the Secretary of the Commission in the manner specified by the Commission. A swap execution facility shall file any amendment to an application subsequent to registration as a submission under part 40 of this chapter or as specified by the Commission.

(4) Effect of incomplete application. If an application is incomplete pursuant to paragraph (b)(1) of this section, the Commission shall notify the

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applicant that its application will not be deemed to have been submitted for purposes of the Commission's review.

(5) Commission review period. For an applicant who submits its application for registration as a swap execution facility on or after August 5, 2015 the Commission shall review such application pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Act.

(6) Commission determination.

(i) The Commission shall issue an order granting registration upon a Commission determination, in its own discretion, that the applicant has demonstrated compliance with the Act and the Commission's regulations applicable to swap execution facilities. If deemed appropriate, the Commission may issue an order granting registration subject to conditions.

(ii) The Commission may issue an order denying registration upon a Commission determination, in its own discretion, that the applicant has not demonstrated compliance with the Act and the Commission's regulations applicable to swap execution facilities.

(c) Temporary registration. An applicant seeking registration as a swap execution facility may request that the Commission grant the applicant temporary registration by complying with the

requirements in paragraph (c)(1) of this section.

(1) Requirements for temporary registration. The Commission shall grant a request for temporary registration upon a Commission determination that the applicant has:

(i) Completed all of the requirements under paragraph (b)(1)(i) of this section; and  
(ii) Submitted a notice to the Commission, concurrent with the filing of the application under paragraph (b)(1)(i) of this section, requesting that the Commission grant the applicant temporary registration. An applicant that is currently operating a swaps-trading platform in reliance upon either an exemption granted by the Commission or some form of no-action relief granted by the Commission staff shall include in such notice a certification that the applicant is operating pursuant to such exemption or no-action relief.

(iii) The Commission may deny a request for temporary registration upon a Commission determination that the applicant has not met the requirements under paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(2) Operation pursuant to a grant of temporary registration. An applicant may operate as a swap execution facility under temporary registration upon receipt of a notice from the Commission granting such

temporary registration, but in no case may begin operating as a temporarily registered swap execution facility before August 5, 2013.

(3) Expiration of temporary registration. The temporary registration for a swap execution facility shall expire on the earlier of the date that:

(i) The Commission grants or denies registration of the swap execution facility as provided under paragraph (b) of this section;  
(ii) The swap execution facility withdraws its application for registration pursuant to paragraph (f) of this section; or  
(iii) Temporary registration terminates pursuant to paragraph (c)(5) of this section.

(4) Effect of temporary registration. A grant of temporary registration by the Commission does not affect the right of the Commission to grant or deny registration as provided under paragraph (b) of this section.

(5) Termination of temporary registration. Paragraph (c) of this section shall terminate two years from the effective date of this regulation except as provided for under paragraph (c)(6) of this section and except for an applicant who requested that the Commission grant the applicant temporary registration by complying with the requirements in paragraph (c)(1) of this section before the termination of

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paragraph (c) of this section and has not been granted or denied registration under paragraph (b)(6) of this section by the time of the termination of paragraph (c) of this section. Such an applicant may operate as a swap execution facility under temporary registration upon receipt of a notice from the Commission granting such temporary registration until the Commission grants or denies registration pursuant to paragraph (b)(6) of this section. On the termination date of paragraph (c) of this section, the Commission shall review such applicant's application pursuant to the time period and procedures in paragraph (b)(5) of this section.

(6) Temporary registration for applicants that are operational designated contract markets. An applicant that is an operational designated contract market and is also seeking to register as a swap execution facility in order to transfer one or more of its contracts may request that the Commission grant the applicant temporary registration by complying with the requirements in paragraph (c)(1) of this section. The termination of temporary registration provision in paragraph (c)(5) of this section shall not apply to an applicant that is a non-dormant designated contract market as described in this paragraph.

(d) Reinstatement of dormant registration. A dormant swap execution facility as defined in section 40.1 of this chapter may reinstate its registration under the procedures of paragraph (b) of this section. The applicant may rely upon previously submitted materials if such materials accurately describe the dormant swap execution facility's conditions at the time that it applies for reinstatement of its registration.

(e) Request for transfer of registration.

(1) A swap execution facility seeking to transfer its registration from its current legal entity to a new legal entity as a result of a corporate change shall file a request for approval to transfer such registration with the Secretary of the Commission in the form and manner specified by the Commission.

(2) Timeline for filing a request for transfer of registration. A request for transfer of registration shall be filed no later than three months prior to the anticipated corporate change; or in the event that the swap execution facility could not have known of the anticipated change three months prior to the anticipated change, as soon as it knows of such change.

(3) Required information. The request for transfer of registration shall include the following:

(i) The underlying agreement that governs the corporate change;

(ii) A description of the corporate change, including the reason for the change and its impact on the swap execution facility, including its governance and operations, and its impact on the rights and obligations of market participants;

(iii) A discussion of the transferee's ability to comply with the Act, including the core principles applicable to swap execution facilities, and the Commission's regulations thereunder;

(iv) The governing documents of the transferee, including, but not limited to, articles of incorporation and bylaws;

(v) The transferee's rules marked to show changes from the current rules of the swap execution facility;

(vi) A representation by the transferee that it:

(A) Will be the surviving entity and successor-in-interest to the transferor swap execution facility and will retain and assume, without limitation, all of the assets and liabilities of the transferor;

(B) Will assume responsibility for complying with all applicable provisions of the Act and the Commission's regulations promulgated thereunder, including this part and appendices thereto;

(C) Will assume, maintain, and enforce all rules implementing and complying with the core principles applicable to swap

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execution facilities, including the adoption of the transferor's rulebook, as amended in the request, and that any such amendments will be submitted to the Commission pursuant to section 5c(c) of the Act and part 40 of this chapter;

(D) Will comply with all self-regulatory responsibilities except if otherwise indicated in the request, and will maintain and enforce all self-regulatory programs; and

(E) Will notify market participants of all changes to the transferor's rulebook prior to the transfer and will further notify market participants of the concurrent transfer of the registration to the transferee upon Commission approval and issuance of an order permitting this transfer.

(vii) A representation by the transferee that upon the transfer:

(A) It will assume responsibility for and maintain compliance with core principles for all swaps previously made available for trading through the transferor, whether by certification or approval; and

(B) None of the proposed rule changes will affect the rights and obligations of any market participant.

(4) Commission determination. Upon review of a request for transfer of registration, the Commission, as soon as practicable, shall issue an order

either approving or denying the request.

(f) Request for withdrawal of application for registration. An applicant for registration as a swap execution facility may withdraw its application submitted pursuant to paragraph (b) of this section by filing a withdrawal request electronically with the Secretary of the Commission. Withdrawal of an application for registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the application was pending with the Commission.

(g) Request for vacation of registration. A swap execution facility may request that its registration be vacated under section 7 of the Act by filing a vacation request electronically with the Secretary of the Commission. Vacation of registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that 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.

### **§ 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.



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(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 Commission 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](mailto:submissions@cftc.gov) and the Division of Market Oversight at [DMOSubmissions@cftc.gov](mailto: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 (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](mailto:submissions@cftc.gov) and the Division of Market Oversight at [DMOSubmissions@cftc.gov](mailto: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

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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) 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.

(b) A swap execution facility shall not, and shall ensure any third-party service provider it uses does not, disclose to either party to a transaction the identity of its counterparty if the transaction was originally executed anonymously. A swap execution facility shall not condition access to its market(s) or market services on a person's consent to the use of any service provided by any third party if use of that service could result in the disclosure of the identity of any counterparty to a transaction that was originally executed anonymously.

### **§ 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 a swap execution facility shall separately register the two entities pursuant to the designated contract market designation procedures set forth in part 38 of this chapter and the swap execution facility registration procedures set forth in this part. On an ongoing basis, the entity shall comply with the core principles for designated contract markets under section 5(d) of the Act and the regulations under part 38 of this chapter and the core principles for swap

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execution facilities under section 5h of the Act and the regulations under this part.

(b) A board of trade, as defined in section 1a(6) of the Act, 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 on the designated contract market and on the swap execution facility shall clearly identify to market participants for each swap whether the execution or trading of such swaps is taking place on the designated contract market or on the swap execution facility.

### **§ 37.9 Methods of execution for required and permitted transactions.**

(a) Execution methods for required transactions.

(1) (i) Required transaction means any transaction involving a ~~swap~~stand-alone swap or any package transaction that is subject to the trade execution requirement in section 2(h)(8) of the Act. A package transaction shall not be deemed a required transaction unless the package transaction as a whole has become subject to the trade execution requirement in section 2(h)(8) of the Act. (ii) Package transaction means a transaction involving two or more instruments: (1) that is executed between two or more

counterparties; (2) that is priced or quoted as one economic transaction with simultaneous or near simultaneous execution of all components; (3) where the execution of each component is contingent upon the execution of all other components; and (4) where the risk of the offsetting components is reasonably equivalent.

(2) Execution methods.

(i) Each ~~Required Transaction~~required transaction that is ~~not~~neither a block trade as defined in § 43.2 of this chapter nor a correcting trade executed in accordance with § 37.13 of this chapter shall be executed on a swap execution facility in accordance with one of the following methods of execution:  
(A) An Order Book as defined in § 37.3(a)(3); or  
(B) A Request for Quote System, as defined in paragraph (a)(3) of this section, that operates in conjunction with an Order Book as defined in § 37.3(a)(3).  
(ii) In providing either one of the execution methods set forth in paragraph (a)(2)(i)(A) or (B) of this section, a swap execution facility may for purposes of execution and communication use any means of interstate commerce, including, but not limited to, the mail, internet, email, and telephone, provided that the chosen execution method satisfies the requirements provided in § 37.3(a)(3) for Order Books or in

paragraph (a)(3) of this section for Request for Quote Systems.

(3) Request for quote system means a trading system or platform in which a market participant transmits a request for a quote to buy or sell a specific instrument to no less than three market participants in the trading system or platform, to which all such market participants may respond. The three market participants shall not be affiliates of or controlled by the requester and shall not be affiliates of or controlled by each other. A swap execution facility that offers a request for quote system in connection with ~~Required Transactions~~required transactions shall provide the following functionality:

(i) At the same time that the requester receives the first responsive bid or offer, the swap execution facility shall communicate to the requester any firm bid or offer pertaining to the same instrument resting on ~~any of~~ the swap execution facility's, whether such firm bid or offer is in an Order Books, as defined in § 37.3(a)(3);, or on the swap execution facility's markets, trading systems or platforms, in an executable form;

(ii) The swap execution facility shall provide the requester with the ability to execute against such firm resting bids or offers along with any responsive orders; and

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(iii) The swap execution facility shall ensure that its trading protocols provide each of its market participants with equal priority in receiving requests for quotes and in transmitting and displaying for execution responsive orders.

(b) Time delay requirement for required transactions on an order book—

(1) Time delay requirement. A swap execution facility shall require that a broker or dealer who seeks to either execute against its customer's order or execute two of its customers' orders against each other through the swap execution facility's Order Book, following some form of pre-arrangement or pre-negotiation of such orders, be subject to at least a 15 second time delay between the entry of those two orders into the Order Book, such that one side of the potential transaction is disclosed and made available to other market participants before the second side of the potential transaction, whether for the broker's or dealer's own account or for a second customer, is submitted for execution.

(2) Adjustment of time delay requirement. A swap execution facility may adjust the time period of the 15 second time delay requirement described in paragraph (b)(1) of this section, based upon a swap's liquidity or other product-specific

considerations; however, the time delay shall be set for a sufficient period of time so that an order is exposed to the market and other market participants have a meaningful opportunity to execute against such order.

(c) Execution methods for permitted transactions.

(1) Permitted transaction means any transaction not involving a swap that is subject to the trade execution requirement in section 2(h)(8) of the Act.

(2) Execution methods. A swap execution facility may offer any method of execution for each ~~Permitted Transaction~~permitted transaction.

### **§ 37.10 Process for a swap execution facility to make a swap available to trade.**

(a)(1) Required submission. A swap execution facility that makes a ~~swap~~stand-alone swap or a package transaction available to trade in accordance with paragraph (b) of this section, shall submit to the Commission its determination with respect to such ~~swap~~stand-alone swap or package transaction as a rule, as that term is defined by § 40.1 of this chapter, pursuant to the procedures under part 40 of this chapter.

(i) Public Comment. The Commission shall provide a public comment period after each submission by a swap execution facility pursuant to this paragraph.

The Commission shall publish a notice of the public comment period on the Commission Web site. Comments from the public shall be submitted as specified in that notice.

(2) Listing requirement. A swap execution facility that makes a ~~swap~~stand-alone swap or a package transaction available to trade must demonstrate that it lists or offers that ~~swap~~stand-alone swap or package transaction for trading on its trading system or platform.

(b) Factors to consider. To make a ~~stand-alone swap~~stand-alone swap or a package transaction available to trade, for purposes of section 2(h)(8) of the Act, a swap execution facility shall consider, as appropriate, the following factors with respect to such ~~swap~~stand-alone swap or package transaction:

- (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. Upon a determination that a ~~stand-alone swap~~stand-alone swap or a package transaction is available to trade on any swap execution facility or designated contract market pursuant to part 40 of this chapter, all other swap execution facilities and designated

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contract markets shall comply with the ~~requirements of~~Commission's regulations promulgated pursuant to section 2(h)(8)(A) of the Act in listing or offering such swap for trading.

(d) Removal—

(1) Determination. The Commission may issue an order to suspend the trade execution requirement in section 2(h)(8) of the Act for any stand-alone swap or package transaction that is ~~issue a determination that a swap is~~ no longer available to trade ~~upon determining that no~~ if none of the factors described in paragraph (b) of this section support a determination that the transaction is made available to trade. ~~swap execution facility or designated contract market lists such swap for trading.~~ The Commission's determination shall be based on either:

(i) Its annual review and assessment of each stand-alone swap or package transaction that has been made available to trade on any swap execution facility or designated contract market pursuant to part 40 of this chapter and that is among the lowest ten percent of the least actively traded on any swap execution facility or designated contract market; or

(ii) Its review and assessment upon notice of de-listing submissions from at least two swap execution facilities or

designated contract markets pursuant to § 40.6 of this chapter. (2) Public Comment. The Commission shall provide a public comment period for each determination that a stand-alone swap or a package transaction is no longer available to trade. The Commission shall publish a notice of the public comment period on the Commission Web site. Comments from the public shall be submitted as specified in that notice.

(3) ~~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 stand-alone swap or a package transaction 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, from exercising the authority delegated in this section.

**§ 37.11 [Reserved].**

**§ 37.12 Trade execution compliance schedule.**

(a) A ~~swap~~transaction involving a stand-alone swap or a package 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~~stand-alone swap or package transaction 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.

**§ 37.13 Re-execution of trades due to operational and clerical errors.**

(a) *Definitions.* (1) Accepted erroneous trade means any trade executed on or subject to the rules of a swap execution facility that was accepted for clearing by a derivatives clearing organization that contains an operational or clerical error or omission made by the swap execution facility, the derivatives clearing organization, a counterparty to the trade or an agent of such counterparty.

(2) Correcting trade means any new correcting trade and any offsetting correcting trade.

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(3) *Erroneous trade* means any accepted erroneous trade and any rejected erroneous trade.

(4) *New correcting trade* means a new pre-arranged trade executed on or subject to the rules of the swap execution facility with terms and conditions that match the terms and conditions of an erroneous trade, other than any operational or clerical error or omission and the time of execution, that is executed as a result of an erroneous trade.

(5) *Offsetting correcting trade* means a new pre-arranged trade executed on or subject to the rules of the swap execution facility that offsets an accepted erroneous trade carried on a derivatives clearing organization's books and records.

(6) *Rejected erroneous trade* means any trade executed on or subject to the rules of a swap execution facility that was rejected from clearing by a derivatives clearing organization as a result of an operational or clerical error or omission made by the swap execution facility, the derivatives clearing organization, a counterparty to the trade or an agent of such counterparty.

(b) *Execution methods for erroneous trades.* (1)

Notwithstanding the requirements of §§ 37.9(a)(2) and 37.203 of this chapter:

(A) in the case of any rejected erroneous trade, a swap execution facility may permit the

market participants that entered into such rejected erroneous trade to enter into a new correcting trade provided that such new correcting trade is submitted for clearing as quickly as technologically practicable after delivery of notice of the rejection by the derivatives clearing organization to such market participants, but, in any event, no later than one hour from the delivery of such notice [Condition 3]; and

(B) in the case of any accepted erroneous trade, the swap execution facility may, no later than three business days after the accepted erroneous trade was executed, permit the market participants that entered into such accepted erroneous trade to execute and submit for clearing [Condition 3]:

(i) an offsetting correcting trade; and

(ii) a new correcting trade.

(2) (A) If the swap execution facility is able to determine how to correct the operational or clerical error or omission in an erroneous trade, the swap execution facility will execute a new correcting trade (and, in the case of an accepted erroneous trade, an offsetting correcting trade) without obtaining consent from the market participants that entered into the erroneous trade. [Condition 4.]

(B) If the swap execution facility is unable to determine how to

correct the operational or clerical error or omission in the erroneous trade, it shall seek guidance from the market participants that entered into the erroneous trade on how to address such operational or clerical error or omission; *provided, however,* that any such guidance may not be implemented without the consent of both such market participants.

[Condition 4.]

(c) *Limitation on re-execution.* A correcting trade that is rejected from clearing by a derivatives clearing organization may not be re-executed in accordance with paragraph (b)(1) of this section and will be void *ab initio* with no liability incurred between the parties to such trade in respect of such trade. [Condition 5.]

(d) *Additional requirements for re-execution.* A swap execution facility may only permit the re-execution of an erroneous trade in accordance with paragraph (b)(1) of this section to the extent that such swap execution facility: (1) has error trade rules consistent with this Part 37 that account for whether any cancellation or price adjustment will adversely impact market integrity, facilitate market manipulation or other illegitimate activity in contravention of one or more core principles or the swap execution facility's other obligations under the Act, the Commission's regulations or the



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swap execution facility's rules

[Condition 2];

(2) has rules (i) setting forth the conditions under which it will determine that an operational or clerical error or omission has occurred and the procedures it will follow to execute, or allow the execution of, a new correcting trade or offsetting correcting trade in accordance with this § 37.13, including addressing the relevant requirements of paragraph (b)(1) of this section; and

(ii) providing what the swap execution facility will do if it is unable to determine how to correct the operational or clerical error or omission in the erroneous trade, including addressing the relevant requirements of paragraph (b)(1) of this section

[Condition 4]; and

(3) in making its determination whether to permit execution of a new correcting trade or offsetting correcting trade in accordance with paragraph (b)(1) of this § 37.13, makes an affirmative finding that the trade or some term therein resulted from an operational or clerical error or omission made by the swap execution facility, the derivatives clearing organization, a counterparty to the trade or an agent of such counterparty

[Condition 6].

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

#### **§ 37.100 Core Principle 1—**

##### **Compliance with core principles.**

(a) In general. To be registered, and maintain registration, as a swap execution facility, the swap execution facility shall comply with—

(1) The core principles described in section 5h of the Act; and

(2) Any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5) of the Act.

(b) Reasonable discretion of a swap execution facility. Unless otherwise determined by the Commission by rule or regulation, a swap execution facility described in paragraph (a) of this section shall have reasonable discretion in establishing the manner in which the swap execution facility complies with the core principles described in section 5h of the Act.

##### **Subpart C—Compliance With Rules**

#### **§ 37.200 Core Principle 2—**

##### **Compliance with rules.**

A swap execution facility shall:

(a) Establish and enforce compliance with any rule of the swap execution facility, including the terms and conditions of the swaps traded or processed on or through the swap execution facility and any limitation on access to the swap execution facility;

(b) Establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to provide market participants with impartial access to the market and to capture information that may be used in establishing whether rule violations have occurred;

(c) Establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades; ~~and~~

(d) Provide by its rules that when a swap dealer or major swap participant enters into or facilitates a swap that is subject to the mandatory clearing requirement of section 2(h) of the Act, the swap dealer or major swap participant shall be responsible for compliance with the mandatory trading requirement under section 2(h)(8) of the Act; ~~and~~

(e) Provide by its rules that any trade that is executed on or subject to the rules of the swap execution facility that is intended to be submitted to a derivatives clearing organization for clearing contemporaneously with execution that is rejected from clearing by such derivatives clearing organization is void *ab initio* with no liability incurred

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[between the parties to such trade in respect of such trade.](#)

### **§ 37.201 Operation of swap execution facility and compliance with rules.**

(a) A swap execution facility shall establish rules governing the operation of the swap execution facility, including, but not limited to, rules specifying trading procedures to be followed by members and market participants when entering and executing orders traded or posted on the swap execution facility, including block trades, as defined in part 43 of this chapter, if offered.

(b) A swap execution facility shall establish and impartially enforce compliance with the rules of the swap execution facility, including, but not limited to—

- (1) The terms and conditions of any swaps traded or processed on or through the swap execution facility;
- (2) Access to the swap execution facility;
- (3) Trade practice rules;
- (4) Audit trail requirements;
- (5) Disciplinary rules; and
- (6) Mandatory trading requirements.

### **§ 37.202 Access requirements.**

(a) Impartial access to markets and market services. A swap execution facility shall provide any eligible contract participant and any independent software vendor with impartial access to its

market(s) and market services, including any indicative quote screens or any similar pricing data displays, provided that the facility has:

- (1) Criteria governing such access that are impartial, transparent, and applied in a fair and nondiscriminatory manner;
- (2) Procedures whereby eligible contract participants provide the swap execution facility with written or electronic confirmation of their status as eligible contract participants, as defined by the Act and Commission regulations, prior to obtaining access; and
- (3) Comparable fee structures for eligible contract participants and independent software vendors receiving comparable access to, or services from, the swap execution facility.

(b) Jurisdiction. Prior to granting any eligible contract participant access to its facilities, a swap execution facility shall require that the eligible contract participant consent to its jurisdiction.

(c) Limitations on access. [\(1\)](#) A swap execution facility shall establish and impartially enforce rules governing any decision to allow, deny, suspend, or permanently bar eligible contract participants' access to the swap execution facility, including when such decisions are made as part of a disciplinary or emergency action taken by the swap execution facility.

[\(2\) A swap execution facility shall not impose or require, nor shall it permit any eligible contract participant to impose or require, as a condition to accessing or transacting on the swap execution facility: \(i\) any mechanism, scheme, functionality, counterparty credit filter, or other arrangement related to swaps that are intended to be submitted to a derivatives clearing organization for clearing contemporaneously with execution that prevents eligible contract participants from interacting or trading with, or viewing the bids and offers \(firm or indicative\) displayed by any other eligible contract participant on that swap execution facility; or \(ii\) any agreement governing an eligible contract participant's obligations or liabilities in respect of any trade executed on or subject to the rules of a swap execution facility that is intended to be submitted to a derivatives clearing organization for clearing contemporaneously with execution and that is not accepted for clearing by such derivatives clearing organization.](#)

[\(3\) A swap execution facility shall not limit access to, or the ability to transact on, the swap execution facility to certain types of eligible contract participants in a discriminatory manner based on, for example, the manner in which they typically interact with the market, anticipated levels of trading activity or entity registration status.](#)

### **§ 37.203 Rule enforcement program.**

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A swap execution facility shall establish and enforce trading, trade processing, and participation rules that will deter abuses and it shall have the capacity to detect, investigate, and enforce those rules.

(a) Abusive trading practices prohibited. A swap execution facility shall prohibit abusive trading practices on its markets by members and market participants. Swap execution facilities that permit intermediation shall prohibit customer-related abuses including, but not limited to, trading ahead of customer orders, trading against customer orders, accommodation trading, and improper cross trading. Specific trading practices that shall be prohibited include front-running, wash trading, pre-arranged trading (except for block trades permitted by part 43 of this chapter, [correcting trades permitted by this part 37](#), or other types of transactions certified to or approved by the Commission pursuant to the procedures under part 40 of this chapter), fraudulent trading, money passes, and any other trading practices that a swap execution facility deems to be abusive. A swap execution facility shall also prohibit any other manipulative or disruptive trading practices prohibited by the Act or by the Commission pursuant to Commission regulation.

(b) Capacity to detect and investigate rule violations. A swap execution facility shall have arrangements and resources for effective enforcement of its rules. Such arrangements shall include the authority to collect information and documents on both a routine and non-routine basis, including the authority to examine books and records kept by the swap execution facility's members and by persons under investigation. A swap execution facility's arrangements and resources shall also facilitate the direct supervision of the market and the analysis of data collected to determine whether a rule violation has occurred.

(c) Compliance staff and resources. A swap execution facility shall establish and maintain sufficient compliance staff and resources to ensure that it can conduct effective audit trail reviews, trade practice surveillance, market surveillance, and real-time market monitoring. The swap execution facility's compliance staff shall also be sufficient to address unusual market or trading events as they arise, and to conduct and complete investigations in a timely manner, as set forth in § 37.203(f).

(d) Automated trade surveillance system. A swap execution facility shall maintain an automated trade surveillance system capable of detecting potential trade

practice violations. The automated trade surveillance system shall load and process daily orders and trades no later than 24 hours after the completion of the trading day. The automated trade surveillance system shall have the capability to detect and flag specific trade execution patterns and trade anomalies; compute, retain, and compare trading statistics; compute trade gains, losses, and swap-equivalent positions; reconstruct the sequence of market activity; perform market analyses; and support system users to perform in-depth analyses and ad hoc queries of trade-related data.

(e) Real-time market monitoring. A swap execution facility shall conduct real-time market monitoring of all trading activity on its system(s) or platform(s) to identify disorderly trading and any market or system anomalies. A swap execution facility shall have the authority to adjust trade prices or cancel trades when necessary to mitigate market disrupting events caused by malfunctions in its system(s) or platform(s) or errors in orders submitted by members and market participants. Any trade price adjustments or trade cancellations shall be transparent to the market and subject to standards that are clear, fair, and publicly available.

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(f) Investigations and investigation reports—

(1) Procedures. A swap execution facility shall establish and maintain procedures that require its compliance staff to conduct investigations of possible rule violations. An investigation shall be commenced upon the receipt of a request from Commission staff or upon the discovery or receipt of information by the swap execution facility that indicates a reasonable basis for finding that a violation may have occurred or will occur.

(2) Timeliness. Each compliance staff investigation shall be completed in a timely manner. Absent mitigating factors, a timely manner is no later than 12 months after the date that an investigation is opened. Mitigating factors that may reasonably justify an investigation taking longer than 12 months to complete include the complexity of the investigation, the number of firms or individuals involved as potential wrongdoers, the number of potential violations to be investigated, and the volume of documents and data to be examined and analyzed by compliance staff.

(3) Investigation reports when a reasonable basis exists for finding a violation. Compliance staff shall submit a written investigation report for disciplinary action in every instance in which compliance staff determines from

surveillance or from an investigation that a reasonable basis exists for finding a rule violation. The investigation report shall include the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; compliance staff's analysis and conclusions; and a recommendation as to whether disciplinary action should be pursued.

(4) Investigation reports when no reasonable basis exists for finding a violation. If after conducting an investigation, compliance staff determines that no reasonable basis exists for finding a rule violation, it shall prepare a written report including the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; and compliance staff's analysis and conclusions.

(5) Warning letters. No more than one warning letter may be issued to the same person or entity found to have committed the same rule violation within a rolling twelve month period.

(g) Additional sources for compliance. A swap execution facility may refer to the guidance and/or acceptable practices in Appendix B of this part to demonstrate to the Commission compliance with the requirements of § 37.203.

### **§ 37.204 Regulatory services provided by a third party.**

(a) Use of regulatory service provider permitted. A swap execution facility may choose to contract with a registered futures association or another registered entity, as such terms are defined under the Act, or the Financial Industry Regulatory Authority (collectively, "regulatory service providers"), for the provision of services to assist in complying with the Act and Commission regulations thereunder, as approved by the Commission. Any swap execution facility that chooses to contract with a regulatory service provider shall ensure that such provider has the capacity and resources necessary to provide timely and effective regulatory services, including adequate staff and automated surveillance systems. A swap execution facility shall at all times remain responsible for the performance of any regulatory services received, for compliance with the swap execution facility's obligations under the Act and Commission regulations, and for the regulatory service provider's performance on its behalf.

(b) Duty to supervise regulatory service provider. A swap execution facility that elects to use the service of a regulatory service provider shall retain sufficient compliance staff to supervise the quality and effectiveness of the regulatory services provided on its behalf. Compliance staff of the swap

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execution facility shall hold regular meetings with the regulatory service provider to discuss ongoing investigations, trading patterns, market participants, and any other matters of regulatory concern. A swap execution facility shall also conduct periodic reviews of the adequacy and effectiveness of services provided on its behalf. Such reviews shall be documented carefully and made available to the Commission upon request.

(c) Regulatory decisions required from the swap execution facility. A swap execution facility that elects to use the service of a regulatory service provider shall retain exclusive authority in all substantive decisions made by its regulatory service provider, including, but not limited to, decisions involving the cancellation of trades, the issuance of disciplinary charges against members or market participants, and denials of access to the trading platform for disciplinary reasons. A swap execution facility shall document any instances where its actions differ from those recommended by its regulatory service provider, including the reasons for the course of action recommended by the regulatory service provider and the reasons why the swap execution facility chose a different course of action.

### § 37.205 Audit trail.

A swap execution facility shall establish procedures to capture and retain information that may be used in establishing whether rule violations have occurred.

(a) Audit trail required. A swap execution facility shall capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses. Such data shall be sufficient to reconstruct all indications of interest, requests for quotes, orders, and trades within a reasonable period of time and to provide evidence of any violations of the rules of the swap execution facility. An acceptable audit trail shall also permit the swap execution facility to track a customer order from the time of receipt through fill, allocation, or other disposition, and shall include both order and trade data.

(b) Elements of an acceptable audit trail program—

(1) Original source documents. A swap execution facility's audit trail shall include original source documents. Original source documents include unalterable, sequentially-identified records on which trade execution information is originally recorded, whether recorded manually or electronically. Records for customer orders (whether filled, unfilled, or cancelled, each of which shall be retained or electronically captured) shall reflect the terms of the order, an account identifier that relates

back to the account(s) owner(s), the time of order entry, and the time of trade execution. Swap execution facilities shall require that all orders, indications of interest, and requests for quotes be immediately captured in the audit trail.

(2) Transaction history database. A swap execution facility's audit trail program shall include an electronic transaction history database. An adequate transaction history database includes a history of all indications of interest, requests for quotes, orders, and trades entered into a swap execution facility's trading system or platform, including all order modifications and cancellations. An adequate transaction history database also includes:

- (i) All data that are input into the trade entry or matching system for the transaction to match and clear;
- (ii) The customer type indicator code;
- (iii) Timing and sequencing data adequate to reconstruct trading; and
- (iv) Identification of each account to which fills are allocated.

(3) Electronic analysis capability. A swap execution facility's audit trail program shall include electronic analysis capability with respect to all audit trail data in the transaction history database. Such electronic analysis capability shall ensure that the swap execution

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facility has the ability to reconstruct indications of interest, requests for quotes, orders, and trades, and identify possible trading violations with respect to both customer and market abuse.

(4) Safe storage capability. A swap execution facility's audit trail program shall include the capability to safely store all audit trail data retained in its transaction history database. Such safe storage capability shall include the capability to store all data in the database in a manner that protects it from unauthorized alteration, as well as from accidental erasure or other loss. Data shall be retained in accordance with the recordkeeping requirements of Core Principle 10 for swap execution facilities and the associated regulations in subpart K of this part.

(c) Enforcement of audit trail requirements—

(1) Annual audit trail and recordkeeping reviews. A swap execution facility shall enforce its audit trail and recordkeeping requirements through at least annual reviews of all members and persons and firms subject to the swap execution facility's recordkeeping rules to verify their compliance with the swap execution facility's audit trail and recordkeeping requirements. Such reviews shall include, but are not limited to, reviews of randomly selected samples of front-end

audit trail data for order routing systems; a review of the process by which user identifications are assigned and user identification records are maintained; a review of usage patterns associated with user identifications to monitor for violations of user identification rules; and reviews of account numbers and customer type indicator codes in trade records to test for accuracy and improper use.

(2) Enforcement program required. A swap execution facility shall establish a program for effective enforcement of its audit trail and recordkeeping requirements. An effective program shall identify members and persons and firms subject to the swap execution facility's recordkeeping rules that have failed to maintain high levels of compliance with such requirements, and impose meaningful sanctions when deficiencies are found. Sanctions shall be sufficient to deter recidivist behavior. No more than one warning letter shall be issued to the same person or entity found to have committed the same violation of audit trail or recordkeeping requirements within a rolling twelve month period.

### **§ 37.206 Disciplinary procedures and sanctions.**

A swap execution facility shall establish trading, trade

processing, and participation rules that will deter abuses and have the capacity to enforce such rules through prompt and effective disciplinary action, including suspension or expulsion of members or market participants that violate the rules of the swap execution facility.

(a) Enforcement staff. A swap execution facility shall establish and maintain sufficient enforcement staff and resources to effectively and promptly prosecute possible rule violations within the disciplinary jurisdiction of the swap execution facility.

(b) Disciplinary panels. A swap execution facility shall establish one or more disciplinary panels that are authorized to fulfill their obligations under the rules of this subpart. Disciplinary panels shall meet the composition requirements of part 40 of this chapter, and shall not include any members of the swap execution facility's compliance staff or any person involved in adjudicating any other stage of the same proceeding.

(c) Hearings. A swap execution facility shall adopt rules that provide for the following minimum requirements for any hearing:

(1) The hearing shall be fair, shall be conducted before members of the disciplinary panel, and shall be promptly convened after reasonable notice to the respondent; and



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(2) If the respondent has requested a hearing, a copy of the hearing shall be made and shall become a part of the record of the proceeding. The record shall not be required to be transcribed unless:

(i) The transcript is requested by Commission staff or the respondent;

(ii) The decision is appealed pursuant to the rules of the swap execution facility; or

(iii) The decision is reviewed by the Commission pursuant to section 8c of the Act or part 9 of this chapter. In all other instances, a summary record of a hearing is permitted.

(d) Decisions. Promptly following a hearing conducted in accordance with the rules of the swap execution facility, the disciplinary panel shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall provide a copy to the respondent. The decision shall include:

(1) The notice of charges or a summary of the charges;

(2) The answer, if any, or a summary of the answer;

(3) A summary of the evidence produced at the hearing or, where appropriate, incorporation by reference of the investigation report;

(4) A statement of findings and conclusions with respect to each charge, and a complete

explanation of the evidentiary and other basis for such findings and conclusions with respect to each charge;

(5) An indication of each specific rule that the respondent was found to have violated; and

(6) A declaration of all sanctions imposed against the respondent, including the basis for such sanctions and the effective date of such sanctions.

(e) Disciplinary sanctions. All disciplinary sanctions imposed by a swap execution facility or its disciplinary panels shall be commensurate with the violations committed and shall be clearly sufficient to deter recidivism or similar violations by other market participants. All disciplinary sanctions, including sanctions imposed pursuant to an accepted settlement offer, shall take into account the respondent's disciplinary history. In the event of demonstrated customer harm, any disciplinary sanction shall also include full customer restitution, except where the amount of restitution or to whom it should be provided cannot be reasonably determined.

(f) Warning letters. Where a rule violation is found to have occurred, no more than one warning letter may be issued per rolling twelve month period for the same violation.

(g) Additional sources for compliance. A swap execution facility may refer to the guidance

and/or acceptable practices in Appendix B of this part to demonstrate to the Commission compliance with the requirements of § 37.206.

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

#### **§ 37.300 Core Principle 3—Swaps not readily susceptible to manipulation.**

The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

#### **§ 37.301 General requirements.**

To demonstrate to the Commission compliance with the requirements of § 37.300, a swap execution facility shall, at the time it submits a new swap contract in advance to the Commission pursuant to part 40 of this chapter, provide the applicable information as set forth in Appendix C to part 38 of this chapter—Demonstration of Compliance That a Contract is not Readily Susceptible to Manipulation. A swap execution facility may also refer to the guidance and/or acceptable practices in Appendix B of this part.

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

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### **§ 37.400 Core Principle 4— Monitoring of trading and trade processing.**

The swap execution facility shall:

(a) Establish and enforce rules or terms and conditions defining, or specifications detailing:

(1) Trading procedures to be used in entering and executing orders traded on or through the facilities of the swap execution facility; and

(2) Procedures for trade processing of swaps on or through the facilities of the swap execution facility; and

(b) Monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

### **§ 37.401 General requirements.**

A swap execution facility shall:

(a) Collect and evaluate data on its market participants' market activity on an ongoing basis in order to detect and prevent manipulation, price distortions, and, where possible, disruptions of the physical-delivery or cash-settlement process;

(b) Monitor and evaluate general market data in order to detect and prevent manipulative activity that would result in the failure of the market price to reflect the

normal forces of supply and demand;

(c) Demonstrate an effective program for conducting real-time monitoring of trading for the purpose of detecting and resolving abnormalities; and

(d) Demonstrate the ability to comprehensively and accurately reconstruct daily trading activity for the purpose of detecting instances or threats of manipulation, price distortion, and disruptions.

### **§ 37.402 Additional requirements for physical-delivery swaps.**

For physical-delivery swaps, the swap execution facility shall demonstrate that it:

(a) Monitors a swap's terms and conditions as they relate to the underlying commodity market; and

(b) Monitors the availability of the supply of the commodity specified by the delivery requirements of the swap.

### **§ 37.403 Additional requirements for cash-settled swaps.**

(a) For cash-settled swaps, the swap execution facility shall demonstrate that it monitors the pricing of the reference price used to determine cash flows or settlement;

(b) For cash-settled swaps listed on the swap execution facility where the reference price is formulated and computed by the swap execution facility, the swap

execution facility shall demonstrate that it monitors the continued appropriateness of its methodology for deriving that price; and

(c) For cash-settled swaps listed on the swap execution facility where the reference price relies on a third-party index or instrument, including an index or instrument traded on another venue, the swap execution facility shall demonstrate that it monitors the continued appropriateness of the index or instrument.

### **§ 37.404 Ability to obtain information.**

(a) A swap execution facility shall demonstrate that it has access to sufficient information to assess whether trading in swaps listed on its market, in the index or instrument used as a reference price, or in the underlying commodity for its listed swaps is being used to affect prices on its market.

(b) A swap execution facility shall have rules that require its market participants to keep records of their trading, including records of their activity in the index or instrument used as a reference price, the underlying commodity, and related derivatives markets, and make such records available, upon request, to the swap execution facility or, if applicable, to its regulatory service provider, and the Commission.

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### **§ 37.405 Risk controls for trading.**

The swap execution facility shall establish and maintain risk control mechanisms to prevent and reduce the potential risk of market disruptions, including, but not limited to, market restrictions that pause or halt trading under market conditions prescribed by the swap execution facility.

### **§ 37.406 Trade reconstruction.**

The swap execution facility shall have the ability to comprehensively and accurately reconstruct all trading on its facility. All audit-trail data and reconstructions shall be made available to the Commission in a form, manner, and time that is acceptable to the Commission.

### **§ 37.407 Regulatory service provider.**

A swap execution facility shall comply with the regulations in this subpart through a dedicated regulatory department or by contracting with a regulatory service provider pursuant to § 37.204.

### **§ 37.408 Additional sources for compliance.**

A swap execution facility may refer to the guidance and/or acceptable practices in Appendix B of this part to demonstrate to the Commission compliance with the requirements of § 37.400.

## **Subpart F—Ability to Obtain Information**

### **§ 37.500 Core Principle 5—Ability to obtain information.**

The swap execution facility shall:

- (a) Establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in section 5h of the Act;
- (b) Provide the information to the Commission on request; and
- (c) Have the capacity to carry out such international information-sharing agreements as the Commission may require.

### **§ 37.501 Establish and enforce rules.**

A swap execution facility shall establish and enforce rules that will allow the swap execution facility to have the ability and authority to obtain sufficient information to allow it to fully perform its operational, risk management, governance, and regulatory functions and any requirements under this part, including the capacity to carry out international information-sharing agreements as the Commission may require.

### **§ 37.502 Collection of information.**

A swap execution facility shall have rules that allow it to collect information on a routine basis, allow for the collection of non-routine data from its market

participants, and allow for its examination of books and records kept by the market participants on its facility.

### **§ 37.503 Provide information to the Commission.**

A swap execution facility shall provide information in its possession to the Commission upon request, in a form and manner that the Commission approves.

### **§ 37.504 Information-sharing agreements.**

A swap execution facility shall share information with other regulatory organizations, data repositories, and third-party data reporting services as required by the Commission or as otherwise necessary and appropriate to fulfill its self-regulatory and reporting responsibilities. Appropriate information-sharing agreements can be established with such entities or the Commission can act in conjunction with the swap execution facility to carry out such information sharing.

## **Subpart G—Position Limits or Accountability**

### **§ 37.600 Core Principle 6—Position limits or accountability.**

(a) In general. To reduce the potential threat of market manipulation or congestion, especially during trading in the

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delivery month, a swap execution facility that is a trading facility shall adopt for each of the contracts of the facility, as is necessary and appropriate, position limitations or position accountability for speculators.

(b) Position limits. For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a) of the Act, the swap execution facility shall:

- (1) Set its position limitation at a level no higher than the Commission limitation; and
- (2) Monitor positions established on or through the swap execution facility for compliance with the limit set by the Commission and the limit, if any, set by the swap execution facility.

### **§ 37.601 Additional sources for compliance.**

Until such time that compliance is required under part 151 of this chapter, a swap execution facility may refer to the guidance and/or acceptable practices in Appendix B of this part to demonstrate to the Commission compliance with the requirements of § 37.600.

### **Subpart H—Financial Integrity of Transactions**

#### **§ 37.700 Core Principle 7—Financial integrity of transactions.**

The swap execution facility shall establish and enforce rules and

procedures for ensuring the financial integrity of swaps entered on or through the facilities of the swap execution facility, including the clearance and settlement of the swaps pursuant to section 2(h)(1) of the Act.

#### **§ 37.701 Required clearing.**

Transactions executed on or through the swap execution facility that are required to be cleared under section 2(h)(1)(A) of the Act or are voluntarily cleared by the counterparties shall be cleared through a Commission-registered derivatives clearing organization, or a derivatives clearing organization that the Commission has determined is exempt from registration.

#### **§ 37.702 General financial integrity.**

A swap execution facility shall provide for the financial integrity of its transactions:

- (a) By establishing minimum financial standards for its members, which shall, at a minimum, require that members qualify as an eligible contract participant as defined in section 1a(18) of the Act;
- (b) For transactions cleared by a derivatives clearing organization:
  - (1) By ensuring that the swap execution facility has the capacity to route transactions to the derivatives clearing organization in a manner acceptable to the

derivatives clearing organization for purposes of clearing; and

- (2) By coordinating with each derivatives clearing organization to which it submits transactions for clearing, in the development of rules and procedures to facilitate prompt and efficient transaction processing in accordance with the requirements of § 39.12(b)(7) of this chapter.

#### **§ 37.703 Monitoring for financial soundness.**

A swap execution facility shall monitor its members to ensure that they continue to qualify as eligible contract participants as defined in section 1a(18) of the Act.

### **Subpart I—Emergency Authority**

#### **§ 37.800 Core Principle 8—Emergency authority.**

The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.

#### **§ 37.801 Additional sources for compliance.**

A swap execution facility may refer to the guidance and/or acceptable practices in Appendix

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B of this part to demonstrate to the Commission compliance with the requirements of § 37.800.

### Subpart J—Timely Publication of Trading Information

#### § 37.900 Core Principle 9—Timely publication of trading information.

(a) In general. The swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission.

(b) Capacity of swap execution facility. The swap execution facility shall be required to have the capacity to electronically capture and transmit trade information with respect to transactions executed on the facility.

#### § 37.901 General requirements.

With respect to swaps traded on or through a swap execution facility, each swap execution facility shall:

- (a) Report specified swap data as provided under part 43 and part 45 of this chapter; and
- (b) Meet the requirements of part 16 of this chapter.

### Subpart K—Recordkeeping and Reporting

#### § 37.1000 Core Principle 10—Recordkeeping and reporting.

(a) In general. A swap execution facility shall:

(1) Maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the

Commission for a period of five years;

(2) Report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under the Act; and

(3) Keep any such records relating to swaps defined in section 1a(47)(A)(v) of the Act open to inspection and examination by the Securities and Exchange Commission.

(b) Requirements. The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap data repositories.

#### § 37.1001 Recordkeeping.

A swap execution facility shall maintain records of all activities relating to the business of the facility, in a form and manner acceptable to the Commission, for a period of at least five years. A swap execution facility shall maintain such records, including a complete audit trail for all swaps

executed on or subject to the rules of the swap execution facility, investigatory files, and disciplinary files, in accordance with the requirements of § 1.31 and part 45 of this chapter.

### Subpart L—Antitrust Considerations

#### § 37.1100 Core Principle 11—Antitrust considerations.

Unless necessary or appropriate to achieve the purposes of the Act, the swap execution facility shall not:

- (a) Adopt any rules or take any actions that result in any unreasonable restraint of trade; or
- (b) Impose any material anticompetitive burden on trading or clearing.

#### § 37.1101 Additional sources for compliance.

A swap execution facility may refer to the guidance and/or acceptable practices in Appendix B of this part to demonstrate to the Commission compliance with the requirements of § 37.1100.

### Subpart M—Conflicts of Interest

#### § 37.1200 Core Principle 12—Conflicts of interest.

The swap execution facility shall:

- (a) Establish and enforce rules to minimize conflicts of interest in its decision-making process; and

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(b) Establish a process for resolving the conflicts of interest.

### Subpart N—Financial Resources

#### § 37.1300 Core Principle 13— Financial resources.

(a) In general. The swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the swap execution facility.

(b) Determination of resource adequacy. The financial resources of a swap execution facility shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the swap execution facility to cover the operating costs of the swap execution facility for a one-year period, as calculated on a rolling basis.

#### § 37.1301 General requirements.

(a) A swap execution facility shall maintain financial resources sufficient to enable it to perform its functions in compliance with the core principles set forth in section 5h of the Act.

(b) An entity that operates as both a swap execution facility and a derivatives clearing organization shall also comply with the financial resource requirements of § 39.11 of this chapter.

(c) Financial resources shall be considered sufficient if their value is at least equal to a total amount

that would enable the swap execution facility to cover its operating costs for a period of at least one year, calculated on a rolling basis.

#### § 37.1302 Types of financial resources.

Financial resources available to satisfy the requirements of § 37.1301 may include:

- (a) The swap execution facility's own capital, meaning its assets minus its liabilities calculated in accordance with U.S. generally accepted accounting principles; and
- (b) Any other financial resource deemed acceptable by the Commission.

#### § 37.1303 Computation of projected operating costs to meet financial resource requirement.

A swap execution facility shall, each fiscal quarter, make a reasonable calculation of its projected operating costs over a twelve-month period in order to determine the amount needed to meet the requirements of § 37.1301. The swap execution facility shall have reasonable discretion in determining the methodology used to compute such projected operating costs. The Commission may review the methodology and require changes as appropriate.

#### § 37.1304 Valuation of financial resources.

No less than each fiscal quarter, a swap execution facility shall compute the current market value of each financial resource used to meet its obligations under § 37.1301. Reductions in value to reflect market and credit risk (“haircuts”) shall be applied as appropriate.

#### § 37.1305 Liquidity of financial resources.

The financial resources allocated by the swap execution facility to meet the requirements of § 37.1301 shall include unencumbered, liquid financial assets (i.e., cash and/or highly liquid securities) equal to at least six months' operating costs. If any portion of such financial resources is not sufficiently liquid, the swap execution facility may take into account a committed line of credit or similar facility for the purpose of meeting this requirement.

#### § 37.1306 Reporting to the Commission.

(a) Each fiscal quarter, or at any time upon Commission request, a swap execution facility shall:

- (1) Report to the Commission:
  - (i) The amount of financial resources necessary to meet the requirements of § 37.1301; and
  - (ii) The value of each financial resource available, computed in accordance with the requirements of § 37.1304;

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(2) Provide the Commission with a financial statement, including the balance sheet, income statement, and statement of cash flows of the swap execution facility or of its parent company;

(b) The calculations required by paragraph (a) of this section shall be made as of the last business day of the swap execution facility's fiscal quarter.

(c) The swap execution facility shall provide the Commission with:

(1) Sufficient documentation explaining the methodology used to compute its financial requirements under § 37.1301;

(2) Sufficient documentation explaining the basis for its determinations regarding the valuation and liquidity requirements set forth in §§ 37.1304 and 37.1305; and

(3) Copies of any agreements establishing or amending a credit facility, insurance coverage, or other arrangement evidencing or otherwise supporting the swap execution facility's conclusions.

(d) The reports required by this section shall be filed not later than 40 calendar days after the end of the swap execution facility's first three fiscal quarters, and not later than 60 calendar days after the end of the swap execution facility's fourth fiscal quarter, or at such later time as the Commission may permit, in its discretion, upon request by the swap execution facility.

### **§ 37.1307 Delegation of authority.**

(a) 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, authority to:

(1) Determine whether a particular financial resource under § 37.1302 may be used to satisfy the requirements of § 37.1301;

(2) Review and make changes to the methodology used to compute projected operating costs under § 37.1303;

(3) Request reports, in addition to fiscal quarter reports, under § 37.1306(a); and

(4) Grant an extension of time to file fiscal quarter reports under § 37.1306(d).

(b) 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, from exercising the authority delegated in this section.

### **Subpart O—System Safeguards**

#### **§ 37.1400 Core Principle 14—System safeguards.**

The swap execution facility shall:

(a) Establish and maintain a program of risk analysis and oversight to identify and minimize

sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that:

(1) Are reliable and secure; and

(2) Have adequate scalable capacity;

(b) Establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for:

(1) The timely recovery and resumption of operations; and

(2) The fulfillment of the responsibilities and obligations of the swap execution facility; and

(c) Periodically conduct tests to verify that the backup resources of the swap execution facility are sufficient to ensure continued:

(1) Order processing and trade matching;

(2) Price reporting;

(3) Market surveillance; and

(4) Maintenance of a comprehensive and accurate audit trail.

#### **§ 37.1401 Requirements.**

(a) A swap execution facility's program of risk analysis and oversight with respect to its operations and automated systems shall address each of the following categories of risk analysis and oversight:

(1) Information security;

(2) Business continuity-disaster recovery planning and resources;

(3) Capacity and performance planning;



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(4) Systems operations;

(5) Systems development and quality assurance; and

(6) Physical security and environmental controls.

(b) A swap execution facility shall maintain a business continuity-disaster recovery plan and resources, emergency procedures, and backup facilities sufficient to enable timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its responsibilities and obligations as a swap execution facility following any disruption of its operations. Such responsibilities and obligations include, without limitation, order processing and trade matching; transmission of matched orders to a designated clearing organization for clearing, where appropriate; price reporting; market surveillance; and maintenance of a comprehensive audit trail. The swap execution facility's business continuity-disaster recovery plan and resources generally should enable resumption of trading and clearing of swaps executed on the swap execution facility during the next business day following the disruption. Swap execution facilities determined by the Commission to be critical financial markets pursuant to Appendix E to part 40 of this chapter are subject to more stringent requirements in this regard, set forth in § 40.9 of this chapter.

(c) A swap execution facility that is not determined by the Commission to be a critical financial market satisfies the requirement to be able to resume its operations and resume its ongoing fulfillment of its responsibilities and obligations during the next business day following any disruption of its operations by maintaining either:

(1) Infrastructure and personnel resources of its own that are sufficient to ensure timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its responsibilities and obligations as a swap execution facility following any disruption of its operations; or

(2) Contractual arrangements with other swap execution facilities or disaster recovery service providers, as appropriate, that are sufficient to ensure continued trading and clearing of swaps executed on the swap execution facility, and ongoing fulfillment of all of the swap execution facility's responsibilities and obligations with respect to such swaps, in the event that a disruption renders the swap execution facility temporarily or permanently unable to satisfy this requirement on its own behalf.

(d) A swap execution facility shall notify Commission staff promptly of all:

(1) Electronic trading halts and material system malfunctions;

(2) Cyber security incidents or targeted threats that actually or potentially jeopardize automated system operation, reliability, security, or capacity; and

(3) Activations of the swap execution facility's business continuity-disaster recovery plan.

(e) A swap execution facility shall provide Commission staff timely advance notice of all material:

(1) Planned changes to automated systems that may impact the reliability, security, or adequate scalable capacity of such systems; and

(2) Planned changes to the swap execution facility's program of risk analysis and oversight.

(f) A swap execution facility shall provide to the Commission, upon request, current copies of its business continuity-disaster recovery plan and other emergency procedures, its assessments of its operational risks, and other documents requested by Commission staff for the purpose of maintaining a current profile of the swap execution facility's automated systems.

(g) A swap execution facility shall conduct regular, periodic, objective testing and review of its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity. A swap execution facility shall also conduct regular, periodic testing and review of its business continuity-disaster recovery

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capabilities. Pursuant to Core Principle 10 under section 5h of the Act (Recordkeeping and Reporting) and §§ 37.1000 through 37.1001, the swap execution facility shall keep records of all such tests, and make all test results available to the Commission upon request.

(h) Part 40 of this chapter governs the obligations of those registered entities that the Commission has determined to be critical financial markets, with respect to maintenance and geographic dispersal of disaster recovery resources sufficient to meet a same-day recovery time objective in the event of a wide-scale disruption. Section 40.9 establishes the requirements for core principle compliance in that respect.

### **Subpart P—Designation of Chief Compliance Officer**

#### **§ 37.1500 Core Principle 15— Designation of chief compliance officer.**

(a) In general. Each swap execution facility shall designate an individual to serve as a chief compliance officer.

(b) Duties. The chief compliance officer shall:

- (1) Report directly to the board or to the senior officer of the facility;
- (2) Review compliance with the core principles in this subsection;
- (3) In consultation with the board of the facility, a body performing a

function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

(4) Be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;

(5) Ensure compliance with the Act and the rules and regulations issued under the Act, including rules prescribed by the Commission pursuant to section 5h of the Act; and

(6) Establish procedures for the remediation of noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or through validated complaints.

(c) Requirements for procedures. In establishing procedures under paragraph (b)(6) of this section, the chief compliance officer shall design the procedures to establish the handling, management response, remediation, retesting, and closing of noncompliance issues.

(d) Annual reports—

(1) In general. In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of:

- (i) The compliance of the swap execution facility with the Act; and

(ii) The policies and procedures, including the code of ethics and conflict of interest policies, of the swap execution facility.

(2) Requirements. The chief compliance officer shall:

(i) Submit each report described in paragraph (d)(1) of this section with the appropriate financial report of the swap execution facility that is required to be submitted to the Commission pursuant to section 5h of the Act; and

(ii) Include in the report a certification that, under penalty of law, the report is accurate and complete.

#### **§ 37.1501 Chief compliance officer.**

(a) Definition of board of directors. For purposes of this part, the term “board of directors” means the board of directors of a swap execution facility, or for those swap execution facilities whose organizational structure does not include a board of directors, a body performing a function similar to a board of directors.

(b) Designation and qualifications of chief compliance officer—

(1) Chief compliance officer required. Each swap execution facility shall establish the position of chief compliance officer and designate an individual to serve in that capacity.

(i) The position of chief compliance officer shall carry with

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it the authority and resources to develop and enforce policies and procedures necessary to fulfill the duties set forth for chief

compliance officers in the Act and Commission regulations.

(ii) The chief compliance officer shall have supervisory authority over all staff acting at the direction of the chief compliance officer.

(2) Qualifications of chief compliance officer. The individual designated to serve as chief compliance officer shall have the background and skills appropriate for fulfilling the responsibilities of the position. No individual disqualified from registration pursuant to sections 8a(2) or 8a(3) of the Act may serve as a chief compliance officer.

(c) Appointment, supervision, and removal of chief compliance officer—

(1) Appointment and compensation of chief compliance officer.

(i) A swap execution facility's chief compliance officer shall be appointed by its board of directors or senior officer. A swap execution facility shall notify the Commission within two business days of appointing any new chief compliance officer, whether interim or permanent.

(ii) The board of directors or the senior officer shall approve the compensation of the chief compliance officer.

(iii) The chief compliance officer shall meet with the board of directors at least annually and the regulatory oversight committee at least quarterly.

(iv) The chief compliance officer shall provide any information regarding the swap execution facility's self-regulatory program that is requested by the board of directors or the regulatory oversight committee.

(2) Supervision of chief compliance officer. A swap execution facility's chief compliance officer shall report directly to the board of directors or to the senior officer of the swap execution facility, at the swap execution facility's discretion.

(3) Removal of chief compliance officer.

(i) Removal of a swap execution facility's chief compliance officer shall require the approval of a majority of the swap execution facility's board of directors. If the swap execution facility does not have a board of directors, then the chief compliance officer may be removed by the senior officer of the swap execution facility.

(ii) The swap execution facility shall notify the Commission of such removal within two business days.

(d) Duties of chief compliance officer. The chief compliance officer's duties shall include, but are not limited to, the following:

(1) Overseeing and reviewing the swap execution facility's compliance with section 5h of the Act and any related rules adopted by the Commission;

(2) In consultation with the board of directors, a body performing a function similar to the board of directors, or the senior officer of the swap execution facility, resolving any conflicts of interest that may arise, including:

(i) Conflicts between business considerations and compliance requirements;

(ii) Conflicts between business considerations and the requirement that the swap execution facility provide fair, open, and impartial access as set forth in § 37.202; and;

(iii) Conflicts between a swap execution facility's management and members of the board of directors;

(3) Establishing and administering written policies and procedures reasonably designed to prevent violations of the Act and the rules of the Commission;

(4) Taking reasonable steps to ensure compliance with the Act and the rules of the Commission;

(5) Establishing procedures for the remediation of noncompliance issues identified by the chief compliance officer through a compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint;

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(6) Establishing and following appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues;

(7) Establishing and administering a compliance manual designed to promote compliance with the applicable laws, rules, and regulations and a written code of ethics designed to prevent ethical violations and to promote honesty and ethical conduct;

(8) Supervising the swap execution facility's self-regulatory program with respect to trade practice surveillance; market surveillance; real-time market monitoring; compliance with audit trail requirements; enforcement and disciplinary proceedings; audits, examinations, and other regulatory responsibilities with respect to members and market participants (including ensuring compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and

(9) Supervising the effectiveness and sufficiency of any regulatory services provided to the swap execution facility by a regulatory service provider in accordance with § 37.204.

(e) Preparation of annual compliance report. The chief compliance officer shall, not less than annually, prepare and sign an annual compliance report that, at a minimum, contains the

following information covering the time period since the date on which the swap execution facility became registered with the Commission or since the end of the period covered by a previously filed annual compliance report, as applicable:

(1) A description of the swap execution facility's written policies and procedures, including the code of ethics and conflict of interest policies;

(2) A review of applicable Commission regulations and each subsection and core principle of section 5h of the Act, that, with respect to each:

(i) Identifies the policies and procedures that are designed to ensure compliance with each subsection and core principle, including each duty specified in section 5h(f)(15)(B) of the Act;

(ii) Provides a self-assessment as to the effectiveness of these policies and procedures; and

(iii) Discusses areas for improvement and recommends potential or prospective changes or improvements to its compliance program and resources;

(3) A list of any material changes to compliance policies and procedures since the last annual compliance report;

(4) A description of the financial, managerial, and operational resources set aside for compliance with respect to the Act and Commission regulations, including

a description of the swap execution facility's self-regulatory program's staffing and structure, a catalogue of investigations and disciplinary actions taken since the last annual compliance report, and a review of the performance of disciplinary committees and panels;

(5) A description of any material compliance matters, including noncompliance issues identified through a compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint, and an explanation of how they were resolved; and

(6) A certification by the chief compliance officer that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the annual compliance report is accurate and complete.

(f) Submission of annual compliance report.

(1) Prior to submission to the Commission, the chief compliance officer shall provide the annual compliance report to the board of directors of the swap execution facility for its review. If the swap execution facility does not have a board of directors, then the annual compliance report shall be provided to the senior officer for his or her review. Members of the board of directors and the senior officer shall not require the chief compliance officer to make any changes to the report. Submission

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of the report to the board of directors or the senior officer, and any subsequent discussion of the report, shall be recorded in board minutes or a similar written record, as evidence of compliance with this requirement.

(2) The annual compliance report shall be submitted electronically to the Commission not later than 60 calendar days after the end of the swap execution facility's fiscal year, concurrently with the filing of the fourth fiscal quarter financial report pursuant to § 37.1306.

(3) Promptly upon discovery of any material error or omission made in a previously filed annual compliance report, the chief compliance officer shall file an amendment with the Commission to correct the material error or omission. An amendment shall contain the certification required under paragraph (e)(6) of this section.

(4) A swap execution facility may request from the Commission an extension of time to file its annual compliance report based on substantial, undue hardship. Extensions of the filing deadline may be granted at the discretion of the Commission.

(g) Recordkeeping.

(1) The swap execution facility shall maintain:

(i) A copy of the written policies and procedures, including the code of ethics and conflicts of interest policies adopted in

furtherance of compliance with the Act and Commission regulations;

(ii) Copies of all materials created in furtherance of the chief compliance officer's duties listed in paragraphs (d)(8) and (d)(9) of this section, including records of any investigations or disciplinary actions taken by the swap execution facility;

(iii) Copies of all materials, including written reports provided to the board of directors or senior officer in connection with the review of the annual compliance report under paragraph (f)(1) of this section and the board minutes or a similar written record that documents the review of the annual compliance report by the board of directors or senior officer; and

(iv) Any records relevant to the swap execution facility's annual compliance report, including, but not limited to, work papers and other documents that form the basis of the report, and memoranda, correspondence, other documents, and records that are

(A) Created, sent, or received in connection with the annual compliance report and

(B) Contain conclusions, opinions, analyses, or financial data related to the annual compliance report.

(2) The swap execution facility shall maintain records in accordance with § 1.31 and part 45 of this chapter.

(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, authority to grant or deny a swap execution facility's request for an extension of time to file its annual compliance report under paragraph (f)(4) of this section.

### MAT Rules for DCMs

#### § 38.11 Trade execution compliance schedule.

(a) A ~~swap~~ transaction [involving a stand-alone swap or a package transaction as defined in § 37.9 of this chapter](#) 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~~ [stand-alone swap or package transaction as defined in § 37.9 of this chapter](#) 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

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the Act sooner than as provided in paragraph (a) of this section.

### § 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~~stand-alone swap or a package transaction as defined in § 37.9 of this chapter 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.

(i) Public Comment. The Commission shall provide a public comment period after each submission by a designated contract market pursuant to this paragraph. The Commission shall publish a notice of the public comment period on the Commission Web site. Comments from the public shall be submitted as specified in that notice.

(2) Listing requirement. A designated contract market that makes a ~~swap~~stand-alone swap or a package transaction as defined in § 37.9 of this chapter available to trade must demonstrate that it lists or offers that ~~swap~~stand-alone swap or package transaction for trading on its trading system or platform.

(b) Factors to consider. To make a ~~stand-alone swap or a package transaction as defined in § 37.9 of this chapter~~ 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~~stand-alone swap or package transaction:

- (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 ~~stand-alone swap or package transaction as defined in § 37.9 of this chapter~~ 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~~Commission's regulations promulgated pursuant to section 2(h)(8)(A) of the Act in listing or offering such swap for trading.

(d) Removal—

(1) Determination. The Commission may issue an order to suspend the trade execution requirement in section 2(h)(8) of the Act for any~~a determination~~

~~that a stand-alone swap or package transaction as defined in § 37.9 of this chapter~~ that is no longer available to trade ~~upon determining that no~~ if none of the factors described in paragraph (b) of this section support a determination that the transaction is made available to trade~~swap execution facility or designated contract market lists such swap for trading.~~ The Commission's determination shall be based on either:

- (i) Its annual review and assessment of each stand-alone swap or package transaction that has been made available to trade on any designated contract market pursuant to part 40 of this chapter and that is among the lowest ten percent of the least actively traded on any swap execution facility or designated contract market; or
- (ii) Its review and assessment upon notice of de-listing submissions from at least two designated contract markets or swap execution facilities pursuant to § 40.6 of this chapter.

(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 ~~stand-alone swap or a package transaction as defined in~~

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§ 37.9 of this chapter is no longer available to trade.

(ii) Public Comment. The Commission shall provide a public comment period for each determination that a stand-alone swap or a package transaction is no longer available to trade. The Commission shall publish a notice of the public comment period on the Commission Web site. Comments from the public shall be submitted as specified in that notice.

(iii) 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, from exercising the authority delegated in this section.

### Part 38 – Designated Contract Markets, Subpart C – Compliance With Rules

#### § 38.150 Core Principle 2.

- (a) *In general.* The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including:
- (1) Access requirements;
  - ~~(2)~~ The terms and conditions of any contracts to be traded on the contract market; ~~and~~
  - (2)

- (3) Rules prohibiting abusive trade practices on the contract market; and
- ~~(3)~~(4) Rules providing that any trade that is executed on or subject to the rules of the contract market that is intended to be submitted to a derivatives clearing organization for clearing contemporaneously with execution that is rejected from clearing by such derivatives clearing organization is void *ab initio* with no liability incurred between the parties to such trade in respect of such trade.

- (b) *Capacity of contract market.* The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the contract market.
- (c) *Requirement of rules.* The rules of the contract market shall provide the board of trade with the ability and authority to obtain any necessary information to perform any function described in this section, including the

capacity to carry out such international information-sharing agreements, as the Commission may require.

### STP Rules

#### § 1.73 Clearing futures commission merchant risk management.

- (a) Each futures commission merchant that is a clearing member of a derivatives clearing organization shall:
- (1) Establish risk-based limits in the proprietary account and in each customer account based on position size, order size, margin requirements, or similar factors;
  - (2) Screen orders for compliance with the risk-based limits in accordance with the following:
    - (i) When a clearing futures commission merchant provides electronic market access or accepts orders for automated execution, it shall use automated means to screen orders for compliance with the limits;
    - (ii) When a clearing futures commission merchant accepts orders for non-automated execution, it shall establish and maintain systems of risk controls reasonably designed to ensure compliance with the limits;
    - (iii) When a clearing futures commission merchant accepts transactions that were executed bilaterally and then submitted for clearing, it shall establish and maintain systems of risk management controls reasonably designed to ensure compliance with the limits;



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(iv) When a firm executes an order on behalf of a customer but gives it up to another firm for clearing,

(A) The clearing futures commission merchant shall establish risk-based limits for the customer, and enter into an agreement in advance with the executing firm that requires the executing firm to screen orders for compliance with those limits in accordance with paragraph (a)(2)(i) or (ii) as applicable; and

(B) The clearing futures commission merchant shall establish and maintain systems of risk management controls reasonably designed to ensure compliance with the limits.

(v) When an account manager bunches orders on behalf of multiple customers for execution as a block and post-trade allocation to individual accounts for clearing:

(A) The futures commission merchant that initially clears the block shall establish risk-based limits for the block account and screen the order in accordance with paragraph (a)(2)(i) or (ii) as applicable;

(B) The futures commission merchants that clear the allocated trades on behalf of customers shall establish risk-based limits for each customer and enter into an agreement in advance with the account manager that requires the account manager to screen orders for compliance with those limits; and

(C) The futures commission merchants that clear the allocated trades on behalf of customers shall establish and maintain systems of risk management

controls reasonably designed to ensure compliance with the limits.

(vi) (A) When a futures commission merchant that is a clearing member of a derivatives clearing organization screens an order in accordance with paragraph (a)(2)(i) or (ii) as applicable and such order falls within the futures commission merchant's pre-execution risk-based limits, then the order shall be deemed accepted for clearing by the futures commission merchant and thereby subject to a guarantee by such futures commission merchant upon execution; and

(B) A futures commission merchant that is a clearing member of a derivatives clearing organization may not reject a trade screened in accordance with paragraph (a)(2)(i) or (ii), as applicable, that falls within the futures commission merchant's pre-execution risk-based limits.

(3) Monitor for adherence to the risk-based limits intra-day and overnight;

(4) Conduct stress tests under extreme but plausible conditions of all positions in the proprietary account and in each customer account that could pose material risk to the futures commission merchant at least once per week;

(5) Evaluate its ability to meet initial margin requirements at least once per week;

(6) Evaluate its ability to meet variation margin requirements in cash at least once per week;

(7) Evaluate its ability to liquidate, in an orderly manner, the positions in the proprietary and customer accounts and estimate

the cost of the liquidation at least once per quarter; and

(8) Test all lines of credit at least once per year.

(b) Each futures commission merchant that is a clearing member of a derivatives clearing organization shall:

(1) Establish written procedures to comply with this regulation; and

(2) Keep full, complete, and systematic records documenting its compliance with this regulation.

(3) All records required to be maintained pursuant to these regulations shall be maintained in accordance with Commission Regulation 1.31 (17 CFR 1.31) and shall be made available promptly upon request to representatives of the Commission and to representatives of applicable prudential regulators.

### **§ 1.74 Futures commission merchant acceptance for clearing.**

(a) Each futures commission merchant that is a clearing member of a derivatives clearing organization shall coordinate with each derivatives clearing organization on which it clears to establish systems that enable the futures commission merchant, or the derivatives clearing organization acting on its behalf, to accept or reject each trade submitted to the derivatives clearing organization for clearing by or for the futures commission merchant or a customer of the futures commission merchant as quickly as would be technologically practicable if fully automated systems were used

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[and in any event within 60 seconds after submission to the futures commission merchant for acceptance](#); and

(b) Each futures commission merchant that is a clearing member of a derivatives clearing organization shall accept or reject each trade submitted by or for it or its customers as quickly as would be technologically practicable if fully automated systems were used [and in any event within 60 seconds after submission to the futures commission merchant for acceptance](#); a clearing futures commission merchant may meet this requirement by:

- (1) Establishing systems to pre-screen orders for compliance with criteria specified by the clearing futures commission merchant;
- (2) Establishing systems that authorize a derivatives clearing organization to accept or reject on its behalf trades that meet, or fail to meet, criteria specified by the clearing futures commission merchant; or
- (3) Establishing systems that enable the clearing futures commission merchant to communicate to the derivatives clearing organization acceptance or rejection of each trade as quickly as would be technologically practicable if fully automated systems were used.

### **§ 39.12 Participant and product eligibility.**

(a) Participant eligibility. A derivatives clearing organization shall establish appropriate admission and continuing participation requirements for

clearing members of the derivatives clearing organization that are objective, publicly disclosed, and risk-based.

(1) Fair and open access for participation. The participation requirements shall permit fair and open access;

(i) A derivatives clearing organization shall not adopt restrictive clearing member standards if less restrictive requirements that achieve the same objective and that would not materially increase risk to the derivatives clearing organization or clearing members could be adopted;

(ii) A derivatives clearing organization shall allow all market participants who satisfy participation requirements to become clearing members;

(iii) A derivatives clearing organization shall not exclude or limit clearing membership of certain types of market participants unless the derivatives clearing organization can demonstrate that the restriction is necessary to address credit risk or deficiencies in the participants' operational capabilities that would prevent them from fulfilling their obligations as clearing members.

(iv) A derivatives clearing organization shall not require that clearing members be swap dealers.

(v) A derivatives clearing organization shall not require that

clearing members maintain a swap portfolio of any particular size, or that clearing members meet a swap transaction volume threshold.

(vi) No derivatives clearing organization shall require as a condition of accepting a swap for clearing that a futures commission merchant enter into an arrangement with a customer that:

(A) Discloses to the futures commission merchant or any swap dealer or major swap participant the identity of a customer's original executing counterparty;

(B) Limits the number of counterparties with whom a customer may enter into trades;

(C) Restricts the size of the position a customer may take with any individual counterparty, apart from an overall limit for all positions held by the customer at the futures commission merchant;

(D) Impairs a customer's access to execution of a trade on terms that have a reasonable relationship to the best terms available; or

(E) Prevents compliance with the time frames set forth in § 1.74(b), § 23.610(b), or § 39.12(b)(7) of this chapter.

(2) Financial resources.

(i) The participation requirements shall require clearing members to have access to sufficient financial resources to meet obligations arising from participation in the derivatives clearing organization

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in extreme but plausible market conditions. A derivatives clearing organization may permit such financial resources to include, without limitation, a clearing member's capital, a guarantee from the clearing member's parent, or a credit facility funding arrangement. For purposes of this paragraph, "capital" means adjusted net capital as defined in § 1.17 of this chapter, for futures commission merchants, and net capital as defined in § 240.15c3-1 of this title, for broker-dealers, or any similar risk adjusted capital calculation for all other clearing members.

(ii) The participation requirements shall set forth capital requirements that are based on objective, transparent, and commonly accepted standards that appropriately match capital to risk. Capital requirements shall be scalable to the risks posed by clearing members.

(iii) A derivatives clearing organization shall not set a minimum capital requirement of more than \$50 million for any person that seeks to become a clearing member in order to clear swaps.

(3) Operational requirements. The participation requirements shall require clearing members to have adequate operational capacity to meet obligations arising from participation in the derivatives clearing organization. The requirements shall include, but

are not limited to: the ability to process expected volumes and values of transactions cleared by a clearing member within required time frames, including at peak times and on peak days; the ability to fulfill collateral, payment, and delivery obligations imposed by the derivatives clearing organization; and the ability to participate in default management activities under the rules of the derivatives clearing organization and in accordance with § 39.16 of this part.

(4) Monitoring. A derivatives clearing organization shall establish and implement procedures to verify, on an ongoing basis, the compliance of each clearing member with each participation requirement of the derivatives clearing organization.

(5) Reporting.

(i) A derivatives clearing organization shall require all clearing members, including non-futures commission merchants, to provide to the derivatives clearing organization periodic financial reports that contain any financial information that the derivatives clearing organization determines is necessary to assess whether participation requirements are being met on an ongoing basis.

(A) A derivatives clearing organization shall require clearing members that are futures commission merchants to provide the financial reports that are specified in § 1.10 of this chapter

to the derivatives clearing organization.

(B) A derivatives clearing organization shall require clearing members that are not futures commission merchants to make the periodic financial reports provided pursuant to paragraph (a)(5)(i) of this section available to the Commission upon the Commission's request or, in lieu of imposing this requirement, a derivatives clearing organization may provide such financial reports directly to the Commission upon the Commission's request.

(ii) A derivatives clearing organization shall adopt rules that require clearing members to provide to the derivatives clearing organization, in a timely manner, information that concerns any financial or business developments that may materially affect the clearing members' ability to continue to comply with participation requirements.

(6) Enforcement. A derivatives clearing organization shall have the ability to enforce compliance with its participation requirements and shall establish procedures for the suspension and orderly removal of clearing members that no longer meet the requirements.

(b) Product eligibility.

(1) A derivatives clearing organization shall establish appropriate requirements for determining the eligibility of agreements, contracts, or

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transactions submitted to the derivatives clearing organization for clearing, taking into account the derivatives clearing organization's ability to manage the risks associated with such agreements, contracts, or transactions. Factors to be considered in determining product eligibility include, but are not limited to:

- (i) Trading volume;
  - (ii) Liquidity;
  - (iii) Availability of reliable prices;
  - (iv) Ability of market participants to use portfolio compression with respect to a particular swap product;
  - (v) Ability of the derivatives clearing organization and clearing members to gain access to the relevant market for purposes of creating, liquidating, transferring, auctioning, and/or allocating positions;
  - (vi) Ability of the derivatives clearing organization to measure risk for purposes of setting margin requirements; and
  - (vii) Operational capacity of the derivatives clearing organization and clearing members to address any unusual risk characteristics of a product.
- (2) A derivatives clearing organization shall adopt rules providing that all swaps with the same terms and conditions, as defined by product specifications established under derivatives clearing organization rules, submitted to the derivatives

clearing organization for clearing are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization.

(3) A derivatives clearing organization shall provide for non-discriminatory clearing of a swap executed bilaterally or on or subject to the rules of an unaffiliated swap execution facility or designated contract market.

(4) A derivatives clearing organization shall not require that one of the original executing parties be a clearing member in order for a product to be eligible for clearing.

(5) A derivatives clearing organization shall select product unit sizes and other terms and conditions that maximize liquidity, facilitate transparency in pricing, promote open access, and allow for effective risk management. To the extent appropriate to further these objectives, a derivatives clearing organization shall select product units for clearing purposes that are smaller than the product units in which trades submitted for clearing were executed.

(6) A derivatives clearing organization that clears swaps shall have rules providing that, upon acceptance of a swap by the derivatives clearing organization for clearing:

- (i) The original swap is extinguished;
  - (ii) The original swap is replaced by an equal and opposite swap between the derivatives clearing organization and each clearing member acting as principal for a house trade or acting as agent for a customer trade;
  - (iii) All terms of a cleared swap must conform to product specifications established under derivatives clearing organization rules; and
  - (iv) If a swap is cleared by a clearing member on behalf of a customer, all terms of the swap, as carried in the customer account on the books of the clearing member, must conform to the terms of the cleared swap established under the derivatives clearing organization's rules.
- (7) Time frame for clearing.
- (i) Coordination with markets and clearing members.
    - (A) Each derivatives clearing organization shall coordinate with each designated contract market and swap execution facility that lists for trading a product that is cleared by the derivatives clearing organization in developing rules and procedures to facilitate prompt, efficient, and accurate processing of all transactions submitted to the derivatives clearing organization for clearing.
    - (B) Each derivatives clearing organization shall coordinate with each clearing member that is a futures commission merchant, swap dealer, or major swap participant to establish systems

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that enable the clearing member, or the derivatives clearing organization acting on its behalf, to accept or reject each trade submitted to the derivatives clearing organization for clearing by or for the clearing member or a customer of the clearing member as quickly as would be technologically practicable if fully automated systems were used [and in any event within 10 seconds after submission to the derivatives clearing organization for clearing.](#)

(ii) Transactions executed competitively on or subject to the rules of a designated contract market or swap execution facility. A derivatives clearing organization shall have rules that provide that the derivatives clearing organization will accept or reject for clearing as quickly after execution as would be technologically practicable if fully automated systems were used [and in any event within 10 seconds after submission to the derivatives clearing organization for clearing,](#) all contracts that are

listed for clearing by the derivatives clearing organization and are executed competitively on or subject to the rules of a designated contract market or a swap execution facility. The derivatives clearing organization shall accept all trades:

(A) For which the executing parties have clearing arrangements in place with clearing members of the derivatives clearing organization; (B) For which the executing parties identify the derivatives clearing organization as the intended clearinghouse; and

(C) That satisfy the criteria of the derivatives clearing organization, including but not limited to applicable risk filters; provided that such criteria are non-discriminatory across trading venues and are applied as quickly as would be technologically practicable if fully automated systems were used.

[\(D\) Any trade that is executed on or subject to the rules of a swap execution facility that is intended to be submitted to a derivatives clearing organization for clearing contemporaneously with execution that is rejected from clearing by such derivatives clearing organization is void \*ab initio\* with no liability incurred between the parties to such trade in respect of such trade.](#)

*(iii) Swaps not executed on or subject to the rules of a designated contract market or a swap execution facility or executed non-competitively on or subject to the rules of a designated contract market or a swap execution facility. A derivatives clearing organization shall have rules that provide that the derivatives clearing organization will accept or reject for clearing as quickly after submission to the derivatives clearing organization as would be technologically practicable if fully automated systems were used, [and in any event within 10 seconds after submission to the derivatives clearing organization for clearing,](#) all swaps that are*

*listed for clearing by the derivatives clearing organization and are not executed on or subject to the rules of a designated contract market or a*

swap execution facility or executed non-competitively on or subject to the rules of a designated contract market or a swap execution facility. The derivatives clearing organization shall accept all trades:

(A) That are submitted by the parties to the derivatives clearing organization, in accordance with § 23.506 of this chapter;

(B) For which the executing parties have clearing arrangements in place with clearing members of the derivatives clearing organization;

(C) For which the executing parties identify the derivatives clearing organization as the intended clearinghouse; and

(D) That satisfy the criteria of the derivatives clearing organization, including but not limited to applicable risk filters; provided that such criteria are non-discriminatory across trading venues and are applied as quickly as would be technologically practicable if fully automated systems were used.

(8) Confirmation. A derivatives clearing organization shall provide each clearing member carrying a cleared swap with a definitive written record of the terms of the transaction which shall legally supersede any previous agreement and serve as a confirmation of the swap. The confirmation of all terms of the transaction shall take place at the same time as the swap is accepted for clearing.

## Part 43 – Real-Time Public Reporting Rules

## Appendix A

### § 43.2 Definitions

As used in this part:

[prior definitions remain unchanged]

*Block trade* means a publicly reportable swap transaction that:

- (1) Involves a swap that is listed on a registered swap execution facility or designated contract market ~~and that is either;~~
  - (i) Executed ~~Occurs~~ away from the ~~registered swap execution facility's or~~ designated contract market's trading system or platform and is executed pursuant to the ~~registered swap execution facility's or~~ designated contract market's rules and procedures; or
  - (ii) Executed on or away from the registered swap execution facility's trading system or platform and is executed as a permitted transaction in accordance with § 37.9(c)(2) and pursuant to the registered swap execution facility's rules and procedures;
- (2) Has a notional or principal amount at or above the appropriate minimum block size applicable to such swap; and
- (3) Is reported subject to the rules and procedures of the registered swap execution facility or

designated contract market and the rules described in this part, including the appropriate time delay requirements set forth in § 43.5 of this part.