

alternative dispute resolution as appropriate for market participants and any market intermediaries.

(14) Governance fitness standards

The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other persons with direct access to the facility (including any parties affiliated with any of the persons described in this paragraph).

(15) Conflicts of interest

The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market and establish a process for resolving such conflicts of interest.

(16) Composition of boards of mutually owned contract markets

In the case of a mutually owned contract market, the board of trade shall ensure that the composition of the governing board reflects market participants.

(17) Recordkeeping

The board of trade shall maintain records of all activities related to the business of the contract market in a form and manner acceptable to the Commission for a period of 5 years.

(18) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, the board of trade shall endeavor to avoid—

- (A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or
- (B) imposing any material anticompetitive burden on trading on the contract market.

(e) Current agricultural commodities

(1) Subject to paragraph (2) of this subsection, a contract for purchase or sale for future delivery of an agricultural commodity enumerated in section 1a(4) of this title that is available for trade on a contract market, as of December 21, 2000, may be traded only on a contract market designated under this section.

(2) In order to promote responsible economic or financial innovation and fair competition, the Commission, on application by any person, after notice and public comment and opportunity for hearing, may prescribe rules and regulations to provide for the offer and sale of contracts for future delivery or options on such contracts to be conducted on a derivatives transaction execution facility.

(Sept. 21, 1922, ch. 369, § 5, as added Pub. L. 106-554, §1(a)(5) [title I, §110(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-384.)

PRIOR PROVISIONS

A prior section 7, acts Sept. 21, 1922, ch. 369, § 5, 42 Stat. 1000; June 15, 1936, ch. 545, §§ 2, 6, 49 Stat. 1491, 1497; Pub. L. 90-258, §§ 10, 11, Feb. 19, 1968, 82 Stat. 29; Pub. L. 93-463, title I, §103(a), (f), (g), title II, §207, Oct. 23, 1974, 88 Stat. 1392, 1400; Pub. L. 102-546, title II, §§201(c), 209(b)(2), Oct. 28, 1992, 106 Stat. 3597, 3606, related to conditions and requirements for designation of boards of trade as contract markets, prior to repeal by

Pub. L. 106-554, §1(a)(5) [title I, §110(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-384.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1a, 2, 6, 7a, 7a-2, 7b-1, 8, 13a, 25 of this title; title 15 section 78c; title 26 section 408.

§ 7a. Derivatives transaction execution facilities

(a) In general

In lieu of compliance with the contract market designation requirements of sections 6(a) and 7 of this title, a board of trade may elect to operate as a registered derivatives transaction execution facility if the facility is—

- (1) designated as a contract market and meets the requirements of this section; or
- (2) registered as a derivatives transaction execution facility under subsection (c) of this section.

(b) Requirements for trading

(1) In general

A registered derivatives transaction execution facility under subsection (a) of this section may trade any contract of sale of a commodity for future delivery (or option on such a contract) on or through the facility only by satisfying the requirements of this section.

(2) Requirements for underlying commodities

A registered derivatives transaction execution facility may trade any contract of sale of a commodity for future delivery (or option on such a contract) only if—

- (A) the underlying commodity has a nearly inexhaustible deliverable supply;
- (B) the underlying commodity has a deliverable supply that is sufficiently large that the contract is highly unlikely to be susceptible to the threat of manipulation;
- (C) the underlying commodity has no cash market;
- (D)(i) the contract is a security futures product, and (ii) the registered derivatives transaction execution facility is a national securities exchange registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.];

(E) the Commission determines, based on the market characteristics, surveillance history, self-regulatory record, and capacity of the facility that trading in the contract (or option) is highly unlikely to be susceptible to the threat of manipulation; or

(F) except as provided in section 7(e)(2) of this title, the underlying commodity is a commodity other than an agricultural commodity enumerated in section 1a(4) of this title, and trading access to the facility is limited to eligible commercial entities trading for their own account.

(3) Eligible traders

To trade on a registered derivatives transaction execution facility, a person shall—

- (A) be an eligible contract participant; or
- (B) be a person trading through a futures commission merchant that—
 - (i) is registered with the Commission;
 - (ii) is a member of a futures self-regulatory organization or, if the person trades

only security futures products on the facility, a national securities association registered under section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-3(a)];

(iii) is a clearing member of a derivatives clearing organization; and

(iv) has net capital of at least \$20,000,000.

(4) Trading by contract markets

A board of trade that is designated as a contract market shall, to the extent that the contract market also operates a registered derivatives transaction execution facility—

(A) provide a physical location for the contract market trading of the board of trade that is separate from trading on the derivatives transaction execution facility of the board of trade; or

(B) if the board of trade uses the same electronic trading system for trading on the contract market and derivatives transaction execution facility of the board of trade, identify whether the electronic trading is taking place on the contract market or the derivatives transaction execution facility.

(c) Criteria for registration

(1) In general

To be registered as a registered derivatives transaction execution facility, the board of trade shall be required to demonstrate to the Commission only that the board of trade meets the criteria specified in subsection (b) of this section and this subsection.

(2) Deterrence of abuses

The board of trade shall establish and enforce trading and participation rules that will deter abuses and has the capacity to detect, investigate, and enforce those rules, including means to—

(A) obtain information necessary to perform the functions required under this section; or

(B) use technological means to—

(i) provide market participants with impartial access to the market; and

(ii) capture information that may be used in establishing whether rule violations have occurred.

(3) Trading procedures

The board of trade shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on the facilities of the board of trade. The rules may authorize—

(A) transfer trades or office trades;

(B) an exchange of—

(i) futures in connection with a cash commodity transaction;

(ii) futures for cash commodities; or

(iii) futures for swaps; or

(C) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the registered derivatives transaction execu-

tion facility or a derivatives clearing organization.

(4) Financial integrity of transactions

The board of trade shall establish and enforce rules or terms and conditions providing for the financial integrity of transactions entered on or through the facilities of the board of trade, and rules or terms and conditions to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.

(d) Core principles for registered derivatives transaction execution facilities

(1) In general

To maintain the registration of a board of trade as a derivatives transaction execution facility, a board of trade shall comply with the core principles specified in this subsection. The board of trade shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles.

(2) Compliance with rules

The board of trade shall monitor and enforce the rules of the facility, including any terms and conditions of any contracts traded on or through the facility and any limitations on access to the facility.

(3) Monitoring of trading

The board of trade shall monitor trading in the contracts of the facility to ensure orderly trading in the contract and to maintain an orderly market while providing any necessary trading information to the Commission to allow the Commission to discharge the responsibilities of the Commission under the¹ chapter.

(4) Disclosure of general information

The board of trade shall disclose publicly and to the Commission information concerning—

(A) contract terms and conditions;

(B) trading conventions, mechanisms, and practices;

(C) financial integrity protections; and

(D) other information relevant to participation in trading on the facility.

(5) Daily publication of trading information

The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for contracts traded on the facility if the Commission determines that the contracts perform a significant price discovery function for transactions in the cash market for the commodity underlying the contracts.

(6) Fitness standards

The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members, and any other persons with direct access to the facility, including any parties affiliated with any of the persons described in this paragraph.

¹ So in original. Probably should be "this".

(7) Conflicts of interest

The board of trade shall establish and enforce rules to minimize conflicts of interest in the decision making process of the derivatives transaction execution facility and establish a process for resolving such conflicts of interest.

(8) Recordkeeping

The board of trade shall maintain records of all activities related to the business of the derivatives transaction execution facility in a form and manner acceptable to the Commission for a period of 5 years.

(9) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, the board of trade shall endeavor to avoid—

(A) adopting any rules or taking any actions that result in any unreasonable restraint of trade; or

(B) imposing any material anticompetitive burden on trading on the derivatives transaction execution facility.

(e) Use of broker-dealers, depository institutions, and farm credit system institutions as intermediaries**(1) In general**

With respect to transactions other than transactions in security futures products, a registered derivatives transaction execution facility may by rule allow a broker-dealer, depository institution, or institution of the Farm Credit System that meets the requirements of paragraph (2) to—

(A) act as an intermediary in transactions executed on the facility on behalf of customers of the broker-dealer, depository institution, or institution of the Farm Credit System; and

(B) receive funds of customers to serve as margin or security for the transactions.

(2) Requirements

The requirements referred to in paragraph (1) are that—

(A) the broker-dealer be in good standing with the Securities and Exchange Commission, or the depository institution or institution of the Farm Credit System be in good standing with Federal bank regulatory agencies (including the Farm Credit Administration), as applicable; and

(B) if the broker-dealer, depository institution, or institution of the Farm Credit System carries or holds customer accounts or funds for transactions on the derivatives transaction execution facility for more than 1 business day, the broker-dealer, depository institution, or institution of the Farm Credit System is registered as a futures commission merchant and is a member of a registered futures association.

(3) Implementation

The Commission shall cooperate and coordinate with the Securities and Exchange Commission, the Secretary of the Treasury, and Federal banking regulatory agencies (including the Farm Credit Administration) in adopting rules and taking any other appropriate ac-

tion to facilitate the implementation of this subsection.

(f) Segregation of customer funds

Not later than 180 days after December 21, 2000, consistent with regulations adopted by the Commission, a registered derivatives transaction execution facility may authorize a futures commission merchant to offer any customer of the futures commission merchant that is an eligible contract participant the right to not segregate the customer funds of the customer that are carried with the futures commission merchant for purposes of trading on or through the facilities of the registered derivatives transaction execution facility.

(g) Election to trade excluded and exempt commodities**(1) In general**

Notwithstanding subsection (b)(2) of this section, a board of trade that is or elects to become a registered derivatives transaction execution facility may trade on the facility any agreements, contracts, or transactions involving excluded or exempt commodities other than securities, except contracts of sale for future delivery of exempt securities under section 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(12)] as in effect on January 11, 1983, that are otherwise excluded from this chapter under section 2(c), 2(d), or 2(g) of this title, or exempt under section 2(h) of this title.

(2) Exclusive jurisdiction of the Commission

The Commission shall have exclusive jurisdiction over agreements, contracts, or transactions described in paragraph (1) to the extent that the agreements, contracts, or transactions are traded on a derivatives transaction execution facility.

(Sept. 21, 1922, ch. 369, § 5a, as added Pub. L. 106-554, § 1(a)(5) [title I, § 111], Dec. 21, 2000, 114 Stat. 2763, 2763A-387.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (b)(2)(D)(ii), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

PRIOR PROVISIONS

A prior section 7a, act Sept. 21, 1922, ch. 369, § 5a, as added June 15, 1936, ch. 545, § 7, 49 Stat. 1497; amended Pub. L. 90-258, § 12, Feb. 19, 1968, 82 Stat. 29; Pub. L. 93-463, title I, § 103(a), (e), (f), title II, §§ 208-210, title IV, §§ 406, 407, Oct. 23, 1974, 88 Stat. 1392, 1400, 1401, 1413; Pub. L. 95-405, §§ 11, 12, Sept. 30, 1978, 92 Stat. 870, 871; Pub. L. 97-444, title II, §§ 216, 217(a), Jan. 11, 1983, 96 Stat. 2306, 2307; Pub. L. 99-641, title I, § 110(2), Nov. 10, 1986, 100 Stat. 3561; Pub. L. 102-546, title I, § 103, title II, §§ 201(a), 206(a)(1), 213(a), 217, 222(a), Oct. 28, 1992, 106 Stat. 3594, 3595, 3601, 3609, 3611, 3615, related to duties of contract markets prior to repeal by Pub. L. 106-554, § 1(a)(5) [title I, § 110(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-384.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1a, 2, 7a-2, 8, 13a, 25 of this title; title 15 section 78f.

§ 7a-1. Derivatives clearing organizations**(a) Registration requirement**

It shall be unlawful for a derivatives clearing organization, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization described in section 1a(9) of this title with respect to a contract of sale of a commodity for future delivery (or option on such a contract) or option on a commodity, in each case unless the contract or option—

(1) is excluded from this chapter by section 2(a)(1)(C)(i), 2(c), 2(d), 2(f), or 2(g) of this title or sections 27 to 27f of this title, or exempted under section 2(h) or 6(c) of this title; or

(2) is a security futures product cleared by a clearing agency registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.].

(b) Voluntary registration

A derivatives clearing organization that clears agreements, contracts, or transactions excluded from this chapter by section 2(c), 2(d), 2(f), or 2(g) of this title or sections 27 to 27f of this title, or exempted under section 2(h) or 6(c) of this title, or other over-the-counter derivative instruments (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991) may register with the Commission as a derivatives clearing organization.

(c) Registration of derivatives clearing organizations**(1) Application**

A person desiring to register as a derivatives clearing organization shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval under paragraph (2).

(2) Core principles**(A) In general**

To be registered and to maintain registration as a derivatives clearing organization, an applicant shall demonstrate to the Commission that the applicant complies with the core principles specified in this paragraph. The applicant shall have reasonable discretion in establishing the manner in which it complies with the core principles.

(B) Financial resources

The applicant shall demonstrate that the applicant has adequate financial, operational, and managerial resources to discharge the responsibilities of a derivatives clearing organization.

(C) Participant and product eligibility

The applicant shall establish—

(i) appropriate admission and continuing eligibility standards (including appropriate minimum financial requirements) for members of and participants in the organization; and

(ii) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the applicant.

(D) Risk management

The applicant shall have the ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.

(E) Settlement procedures

The applicant shall have the ability to—

(i) complete settlements on a timely basis under varying circumstances;

(ii) maintain an adequate record of the flow of funds associated with each transaction that the applicant clears; and

(iii) comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations.

(F) Treatment of funds

The applicant shall have standards and procedures designed to protect and ensure the safety of member and participant funds.

(G) Default rules and procedures

The applicant shall have rules and procedures designed to allow for efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the derivatives clearing organization.

(H) Rule enforcement

The applicant shall—

(i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with rules of the applicant and for resolution of disputes; and

(ii) have the authority and ability to discipline, limit, suspend, or terminate a member's or participant's activities for violations of rules of the applicant.

(I) System safeguards

The applicant shall demonstrate that the applicant—

(i) has established and will maintain a program of oversight and risk analysis to ensure that the automated systems of the applicant function properly and have adequate capacity and security; and

(ii) has established and will maintain emergency procedures and a plan for disaster recovery, and will periodically test backup facilities sufficient to ensure daily processing, clearing, and settlement of transactions.

(J) Reporting

The applicant shall provide to the Commission all information necessary for the Commission to conduct the oversight function of the applicant with respect to the activities of the derivatives clearing organization.

(K) Recordkeeping

The applicant shall maintain records of all activities related to the business of the applicant as a derivatives clearing organization in a form and manner acceptable to the Commission for a period of 5 years.