



Commodity Futures Trading Commission

Office of Public Affairs

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Q & A – Final Rule on Registration of Foreign Boards of Trade

What is the goal of the rulemaking?

The rulemaking creates a registration system for foreign boards of trade (FBOT) seeking to provide their members or other participants located in the United States with direct access to the FBOT's electronic order entry and trade matching system. The authority to implement the registration system is found in Section 4(b) of the Commodity Exchange Act, as amended by Section 738 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). Section 738 of the Dodd-Frank Act specifically provides that the Commission may adopt rules and regulations requiring registration for those FBOTs that provide direct access, including rules and regulations establishing procedures and requirements applicable to registration. In so doing, the Commission is to consider whether the FBOT is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the FBOT's home country. Direct access is defined in the legislation as an explicit grant of authority by an FBOT to an identified member or other participant located in the U.S. to enter trades directly into the FBOT's trade matching system.

Will the FBOT registration system replace any current or existing FBOT registration system?

There is not currently a formal registration system in place for FBOTs that want to permit members in the U.S. to enter orders directly into the FBOT's trade matching system. Rather, Commission staff issues direct access no-action relief letters (formerly referred to as foreign terminal no-action letters) to FBOTs seeking to provide their members and other participants with direct access. The registration system updates and replaces the Commission's existing process of issuing staff no-action letters. By adopting uniform application procedures and registration requirements and conditions, the process by which FBOTs are permitted to provide members and other participants located in the U.S. with direct access to their trading systems will become more standardized and more transparent to both registration applicants and the general public and will promote fair and consistent treatment of all applicants. Further, generally applicable regulations will provide greater legal certainty for FBOTs providing direct access than the no-action relief process because no-action letters are issued by the staff and are not binding on the Commission.

What is included in the registration system?

The registration rules include ten sections of registration standards and procedures and an appendix that includes two application forms and that describes what documentation and other information should be included in an application for registration. The sections include the following:

Part 48 of the Commission's Regulations:

1. Scope
2. Definitions
3. Registration Required
4. Registration Eligibility and Scope
5. Registration Procedures
6. Foreign Boards of Trade Providing Direct Access Pursuant to Existing No-action Relief
7. Requirements for Registration
8. Conditions of Registration
9. Revocation of Registration
10. Additional Contracts

The registration regulations apply to any registered FBOT, initially and on an ongoing basis, that wants to provide its identified members or other participants located in the U.S. with direct access to its trading system. The regulations set forth the criteria that will be used to determine if an FBOT is eligible to become registered and further provide that it will be unlawful for an FBOT to permit direct access unless the Commission has issued an Order of Registration. Further, it will be unlawful for an FBOT to make false or misleading statements in connection with any application for registration. The registration regulations also describe how and where to apply for registration and provide for a “limited” registration application process for those FBOTs that are currently relying on staff-issued no-action relief letters to provide direct access.

How will the registration system relate to the existing staff no-action process?

The FBOT registration system will replace the existing staff-issued direct access no-action letters traditionally relied upon by FBOTs providing direct access from the United States. Many of the requirements for and conditions applied to FBOT registration have evolved from those applicable to FBOTs currently granted no-action relief. These requirements and conditions have been developed through experience gained from reviewing applications for and issuing staff no-action letters.

What will be the criteria for FBOT registration?

The regulations identify the criteria that FBOTs will have to meet to become registered to provide direct access from the U.S. Those criteria include, among others, possessing the attributes of an established, organized exchange; adhering to appropriate rules prohibiting abusive trading practices; and enforcing appropriate rules to maintain market and financial integrity. As the staff does when granting no-action relief, and as required by the Dodd-Frank Act and the registration regulations, the CFTC will evaluate whether the FBOT’s home regulatory authority oversees the FBOT in a manner that is comparable to the manner in which the CFTC oversees DCMs; specifically, whether the FBOT’s regulator supports and enforces regulatory objectives that are substantially equivalent to those supported and enforced by the CFTC, such as prevention of market manipulation and customer and market abuse.

What entities will be eligible to trade via direct access from the U.S.?

The registration regulations identify the types of entities to which a registered FBOT could grant direct access: identified members and other participants that trade for their proprietary accounts; FCMs that submit orders on behalf of U.S. customers; and CPOs or CTAs, or entities exempt from such registration, that submit orders on behalf of U.S. pools or for accounts of U.S. customers for which they have discretionary authority. This is consistent with the existing no-action relief.

What will be the scope of the application process and the conditions of registration?

The registration regulations describe the requirements that the FBOT will be required to meet in order to be registered. The requirements are divided into the same seven general categories currently evaluated by staff during the course of a review of an application for no-action relief: membership criteria, the trading system, terms and conditions of contracts to be made available, settlement and clearing, the regulatory regime governing the FBOT, the FBOT’s and the clearing organization’s rules and rule enforcement, and information sharing. Whether they are successfully met will be determined by review of the information and documentation submitted by the applicant and, as appropriate, a staff on-site visit to the FBOT and clearing organization. The registration regulations also detail the conditions that a registered FBOT must meet to retain its registration, including specified conditions for maintaining registration; reporting obligations; and conditions that apply to contracts traded on an FBOT via direct access that are linked to contracts traded on a designated contract market or other U.S. registered entity. The linked contract conditions include those identified in the Dodd-Frank Act and those derived from Commission staff experience in dealing with linked contracts made available pursuant to no-action relief letters.

The regulations also identify certain reasons for which an FBOT’s registration could be revoked, including failure to satisfy registration requirements or conditions. The regulations describe the procedures to be followed by a registered FBOT that wants to make available for trading by direct access additional contracts, including non-narrow-based stock index futures contracts. Finally, the appendix to the regulations consists of two application forms for registration, one for the FBOT and one for the clearing organization. The application forms identify what should be included in an application for FBOT registration in order to demonstrate that the registration requirements have been met.