

CFTC Form 205 Exempt Commercial Market ("ECM") Annual Certification

<p>NOTICE: Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this, to Agency Clearance Officer, Office of General Counsel, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.</p>															
<p>Instructions: The Commodity Exchange Act (CEA) and CFTC regulatory requirements are shown under column one. Please provide your responses under column two, and sign and date at the bottom of the form, confirming that all of the information provided in the certification is correct, and send to the Secretary of the Commission, attn of the Division of Market Oversight.</p>															
<p>CEA § 2(h)(5) Provisions</p> <p>§ 2(h)(5)</p> <p>An electronic trading facility relying on the exemption provided in paragraph (3) shall notify the Commission of its intention to operate an electronic trading facility in reliance on the exemption set forth in paragraph (3), which notice shall include (i) the name and address of the facility and a person designated to receive communications from the Commission.</p>	<p style="text-align: center;">Update of Information & Confirmation of Compliance</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; padding: 2px;">Name of ECM:</td> <td style="width: 40%;"></td> </tr> <tr> <td style="padding: 2px;">Address:</td> <td></td> </tr> <tr> <td style="padding: 2px;">Web URL:</td> <td></td> </tr> <tr> <td style="padding: 2px;">Contact Person:</td> <td></td> </tr> <tr> <td style="padding: 2px;">Phone #:</td> <td></td> </tr> <tr> <td style="padding: 2px;">Email Address:</td> <td></td> </tr> <tr> <td style="padding: 2px;">Any trading on the ECM during this calendar year?</td> <td style="text-align: center;">Yes <input type="checkbox"/> No <input type="checkbox"/></td> </tr> </table>	Name of ECM:		Address:		Web URL:		Contact Person:		Phone #:		Email Address:		Any trading on the ECM during this calendar year?	Yes <input type="checkbox"/> No <input type="checkbox"/>
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<p>(ii) the commodity categories that the facility intends to list or otherwise make available for trading on the facility in reliance on the exemption set forth in paragraph (3).</p>															
<p>(iii) certifications that –</p> <p>(I) no executive officer or member of the governing board of, or any holder of a 10 percent or greater equity interest in, the facility is a person described in any of subparagraphs (A) through (H) of § 8a(2);</p> <p>(II) the facility will comply with the conditions for exemption under this paragraph;</p> <p>and</p> <p>(III) the facility will notify the Commission of any material change in the information previously provided by the facility to the Commission pursuant to this paragraph; and</p>	<p>Please check the appropriate box below. Please provide an explanation on a separate sheet if any answer is "no".</p> <p style="text-align: center;">Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p style="text-align: center;">Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p style="text-align: center;">Yes <input type="checkbox"/> No <input type="checkbox"/></p>														
<p>(iv) the identity of any derivatives clearing organization to which the facility transmits or intends to transmit transaction data for the purpose of facilitating the clearance and settlement of transactions conducted on the facility in reliance on the exemption set forth in paragraph (3);</p>	<p>Are any products cleared? If so, identify the clearing organization (or indicate if not applicable):</p>														
<p>2(h)(5)(B)(i)—<i>See 36.3(b) below</i></p>															
<p>2(h)(5)(E) - have a reasonable basis for believing that participants authorized to conduct transactions on the facility in reliance on the exemption set forth in paragraph (3) are eligible commercial entities (ECEs) (<i>See also</i> Commission Regulation 36.3(b)(1)(iii)).</p>	<p>Please explain the basis for believing that participants are ECEs.</p>														

<p style="text-align: center;">CFTC Regulatory Provisions (§36.3)</p> <p>§36.3(b) <i>Required information.</i> (1) <i>All electronic trading facilities.</i> A facility operating in reliance on the exemption in § 2(h)(3) of the Act, initially and on an on-going basis, must:</p> <p>(i) Provide the Commission with the terms and conditions, as defined in Commission Regulation</p>	<p style="text-align: center;">Confirmation of Compliance</p> <p style="text-align: center;">Please explain any changes in the terms and conditions, product descriptions, trading conventions and mechanisms</p>
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40.1(i) and product descriptions for each agreement, contract or transaction listed by the facility in reliance on the exemption set forth in § 2(h)(3) of the Act, as well as trading conventions, mechanisms and practices;

(ii) Provide the Commission with information explaining how the facility meets the definition of "trading facility" contained in § 1a(33) of the Act and provide the Commission with access to the electronic trading facility's trading protocols, in a format specified by the Commission;

and practices for each relevant agreement, contract or transaction, that have not yet been identified to the CFTC.

Please explain any changes in how the facility meets the definition of "trading facility" contained in § 1a(33) of the Act, that have not yet been identified to the CFTC.

§ 36.3(b)(1)(iv)—See 36.3(c)(2) below.

§ 36.3(b)(2) *Electronic trading facilities trading or executing agreements, contracts or transactions other than significant price discovery contracts.* In addition to the requirements of paragraph (b)(1) above, a facility operating in reliance on the exemption in § 2(h)(3) of the Act, with respect to agreements, contracts or transactions that have not been determined to perform significant price discovery function, initially and on an on-going basis, must:

(i) Identify to the Commission those agreements, contracts and transactions conducted on the electronic trading facility with respect to which it intends, in good faith, to rely on the exemption in § 2(h)(3) of the Act, and which averaged five trades per day or more over the most recent calendar quarter;

*****; or

§ 36.3(b)(2)(i)(B) Provide to the Commission, in a form and manner acceptable to the Commission, electronic access to those transactions conducted on the electronic trading facility in reliance on the exemption in § 2(h)(3) of the Act, and meeting the average five trades per day or more threshold test of this section, which would allow the Commission to compile the information described in Commission Regulation 36.3(b)(2)(i)(A) and create a permanent record thereof.

No transactions on the facility meet the 5 trades per day threshold (please provide explanation)

All transactions meeting the 5 trades per day threshold have already been identified to the CFTC

Some transactions meeting the 5 trades per day threshold have recently been identified by the ECM and have not yet been identified to the CFTC (Please list the transactions on a separate sheet and provide the information described in Commission Regulation 36.3(b)(2)(i)(A))

Not applicable

Electronic access has already been provided to the CFTC

§ 36.3(b)(2)(ii) Maintain a record of allegations or complaints received by the electronic trading facility concerning instances of suspected fraud or manipulation in trading activity conducted in reliance on the exemption set forth in § 2(h)(3) of the Act. The record shall contain the name of the complainant, if provided, date of the complaint, market instrument, substance of the allegations, and name of the person at the electronic trading facility who received the complaint.

(iii) Provide to the Commission, in the form and manner prescribed by the Commission, a copy of the record of each complaint received pursuant to § 36.3(b)(2)(ii) that alleges, or relates to, facts that would constitute a violation of the Act or Commission regulations. Such copy shall be provided to the Commission no later than 30 calendar days after the complaint is received. Provided, however, that in the case of a complaint alleging, or relating to, facts that would constitute an ongoing fraud or market manipulation under the Act or Commission rules, such

Complaints of fraud or manipulation have been received.

Yes No

Not applicable

Complaints of fraud or manipulation received have been identified to the CFTC

Some complaints of fraud or manipulation received by the ECM have not yet been identified to the CFTC (Please list, with all required information, on a separate sheet)

<p>copy shall be provided to the Commission within three business days after the complaint is received.</p> <p>(iv) Provide to the Commission on a quarterly basis, within 15 calendar days of the close of each quarter, a list of each agreement, contract or transaction executed on the electronic trading facility in reliance on the exemption set forth in § 2(h)(3) of the Act and indicate for each such agreement, contract or transaction the contract terms and conditions, the contract's average daily trading volume, and the most recent open interest figures.</p>	<p>Quarterly reports have been provided to the Commission pursuant to § 36.3(b)(2)(iv).</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Please provide an explanation on a separate sheet if answer is "no".</p>
<p>§36.3(c)(2) <i>Notification of possible significant price discovery contract conditions.</i> An electronic trading facility operating in reliance on § 2(h)(3) of the Act shall promptly notify the Commission and such notification shall be accompanied by supporting information or data concerning any contract that:</p> <p>(i) Averaged five trades per day or more over the most recent calendar quarter; and;</p> <p>(ii) (A) For which the exchange sells its price information regarding the contract to market participants or industry publications; or (B) Whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another agreement, contract or transaction.</p>	<p>Identify any products that may serve as a significant source of price discovery for transactions in the cash market for the commodity underlying any contract, that have not yet been identified to the CFTC.</p>

I certify that _____ (select one below):

- (1) continues to operate as an ECM in reliance upon § 2(h)(3) of the Act and all of the information contained in the Notification of Operation as an Exempt Commercial Market is correct or has been corrected as a result of this certification;
- or
- (2) is no longer operating as an ECM in reliance upon § 2(h)(3) of the Act and all the information contained in the Notification of Operation as an Exempt Commercial Market is correct or has been corrected as a result of this certification.

Signature _____

Position _____

Date _____