



Commodity Futures Trading Commission

Office of Public Affairs

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Final Rules Regarding the Registration of Foreign Boards of Trade

The Commodity Futures Trading Commission (CFTC or Commission) will consider for publication in the Federal Register final rules which will create a registration system for Foreign Boards of Trade (FBOT). The final rules implement provisions in the Commodity Exchange Act (CEA or Act), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

On July 21, 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act. Among other things, the Dodd-Frank Act further amended the CEA to:

- Permit the CFTC to issue rules requiring registration and prescribing registration procedures for FBOTs seeking to provide direct access to their trading systems to members and other participants located in the United States. Section 738 of the Dodd-Frank Act specifically amends § 4(b) of the CEA and provides authority upon which the Commission may adopt rules implementing a registration system for those FBOTs. In doing so, 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.
- Define "direct access" as an explicit grant of authority by an FBOT to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the FBOT.
- Impose certain statutorily mandated conditions for 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 FBOT registration system will replace the existing staff no-action process.

The FBOT registration system will replace the existing policy under which staff-issued direct access no-action letters that are relied upon by FBOTs providing direct access from the United States. Many of the registration requirements and conditions applicable to FBOT registration have evolved from those that are applicable to FBOTs currently applying for and subsequently granted no-action relief. These requirements and conditions have been developed through experience gained from reviewing applications for and issuing staff direct access no-action relief letters. For instance, in determining whether to register the FBOT, the CFTC will evaluate whether the FBOT's home regulatory authority oversees the FBOT in a manner that is comparable to the CFTC's oversight of 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. 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.

The FBOT application process and registration conditions:

The regulations describe the requirements that the FBOT will be required demonstrate that it meets 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 these requirements are successfully met will be determined by review of the information and documentation submitted by the applicant and, if applicable, a staff on-site visit to the FBOT and clearing organization. The 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 linked contracts. The linked contract conditions include those specifically identified in the Dodd-Frank Act as well as those derived from Commission staff experience in dealing with linked contracts made available pursuant to no-action relief letters.

The 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 the accounts of U.S. customers for which they have discretionary authority.

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.