



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Market Oversight

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### **Division of Market Oversight Guidance on Swap Execution Facility Jurisdiction**

The Division of Market Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”) is issuing guidance (“Guidance”) to swap execution facilities (“SEFs”) and applicants for SEF registration concerning consent by market participants to the jurisdiction of a SEF. In response to a number of requests for clarification, the Division confirms in this Guidance that under the Commodity Exchange Act (“Act”) and Commission regulations discussed herein, all market participants of a SEF must consent to the jurisdiction of that SEF.

Section 5h(f)(2)(A) of the Act sets forth Core Principle 2 for SEFs and requires, among other things, that a SEF “establish and enforce compliance with any rule of the swap execution facility, including – (i) the terms and conditions of the swaps traded or processed on or through the swap execution facility; and (ii) any limitation on access to the swap execution facility.”<sup>1</sup>

To implement this core principle, the Commission promulgated regulations, including Regulation 37.202(b). Regulation 37.202(b) provides that “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.”<sup>2</sup> In the SEF Final Rule’s preamble discussion of Regulation 37.202(b), the Commission noted that “jurisdiction must be established by a SEF prior to granting eligible contract participants access to its markets in order to effectively investigate and sanction persons that violate SEF rules.”<sup>3</sup> In responding to a request to clarify that this section only applies to a SEF’s members and not to customers of members whose orders are executed on a SEF, the Commission clarified in the preamble that the scope of Regulation 37.202(b) is not limited to members, but also encompasses all market participants of a SEF, as defined under Regulation 37.200.<sup>4</sup> Notably, the Commission stated that “market participant,” when used with respect to a SEF, means a “person that directly or indirectly effects transactions on the SEF. This includes persons with trading privileges on the SEF and persons whose trades are intermediated.”<sup>5</sup>

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<sup>1</sup> 7 U.S.C. § 7b–3(f)(2)(A).

<sup>2</sup> 17 C.F.R. § 37.202(b). “Eligible contract participant” is defined in Section 1a(18) of the Act. Subject to meeting specified requirements, it includes entities that act for their own account, those acting as a “broker or performing an equivalent agency function on behalf of another person...”; investment advisers; and commodity trading advisors. 7 U.S.C. § 1a(18)(B)(i)-(ii).

<sup>3</sup> 78 Fed. Reg. 33509.

<sup>4</sup> Id.

<sup>5</sup> Id. at 33506.

Consistent with Section 5h(f)(2)(A) of the Act and Regulation 37.202(b), the Division holds the position that all market participants on a SEF that either directly or indirectly effect transactions on the SEF must consent to the SEF's jurisdiction as a prerequisite for access. The Division clarifies that while a SEF must obtain consent to its jurisdiction from all market participants that either directly or indirectly effect transactions on its facility, such consent need not be obtained by the SEF through an affirmative writing. Rather, at this time, a SEF may comply with this requirement by providing in its rulebook that any person initiating or executing a transaction on or subject to the rules of the SEF directly or through an intermediary, and any person for whose benefit such a transaction has been initiated or executed, consents to the jurisdiction of the SEF.

This Guidance supersedes any previous guidance issued by the Division on these topics to the extent that it is inconsistent with such guidance. This Guidance, and the positions taken herein, represent the views of the Division only and do not necessarily represent the views of the Commission or of any other office or division of the Commission. If you have any questions concerning this Guidance, please contact Nancy Markowitz, Deputy Director, Division of Market Oversight, at (202) 418-5453 or [nmarkowitz@cftc.gov](mailto:nmarkowitz@cftc.gov); or Jonathan Lave, Associate Director, Division of Market Oversight, at (202) 418-5983, or [jlave@cftc.gov](mailto:jlave@cftc.gov).

Sincerely,

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Vincent A. McGonagle  
Director  
Division of Market Oversight