



Commodity Futures Trading Commission

Office of Public Affairs

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Proposed 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 proposed rules which will create a registration system for Foreign Boards of Trade (FBOT). The proposed rules implement provisions of the Commodity Exchange Act (CEA or Act), as amended by the 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 from 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.

The proposed FBOT registration system will replace the existing staff no-action process

The proposed FBOT registration system would 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 proposed requirements for and conditions applied to FBOT registration would be based upon 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. For instance, in determining whether to register the FBOT, the CFTC would 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.

Registration would be required for new FBOTs and FBOTs operating under an existing no-action letter

The proposed regulations would 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. It provides that it would be unlawful for an FBOT to permit direct access unless the Commission has issued it an Order of Registration. Further, it would be unlawful for an FBOT to make false or misleading statements in connection with any application for registration. The proposal describes how and where to apply for registration, and provides a "limited" registration application process for those FBOTs that are currently relying on staff-issued direct access no-action relief letters.

The proposed FBOT application process and registration conditions

The proposal describes the requirements that the FBOT would 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, trading system, contracts, settlement and clearing, regulatory authorities,

rules and rule enforcement, and information sharing. Whether they are successfully met would be determined by review of the information submitted by the applicant and a staff due diligence on-site visit to the FBOT and clearing organization. The proposal also details the conditions that a registered FBOT must meet to retain its registration, including general conditions; real time, quarterly and annual reporting obligations; and conditions that apply to linked contracts. The linked contract conditions include those identified in the Dodd-Frank Act and those derived from Commission staff experience in issuing no-action relief letters.

The proposal identifies 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.

The proposal also identifies certain reasons for which an FBOT's registration could be revoked and identifies certain actions that, if taken by a registered FBOT, could have an adverse impact on the market and the public interest and sets forth possible Commission actions to remedy such an adverse impact. The proposal describes 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 proposed regulation identifies what should be included in an application for FBOT registration in order to demonstrate that the registration requirements have been met.