



Commodity Futures Trading Commission

Office of Public Affairs

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Proposed Rulemaking Q & A – Registration of Foreign Boards of Trade

What is the goal of the proposed rulemaking?

The notice of proposed rulemaking proposes 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 trading and order matching system. The authority to implement the registration system is found in Section 4(b) of the Commodity Exchange Act, as amended by the 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 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 new 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 proposed 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 letters (formerly referred to as foreign terminal no-action letters) to FBOTs seeking to provide their members and other participants direct access to the trading system from within the U.S. If adopted, the proposed registration system would update and replace the Commission's existing process of issuing staff no-action letters.

What is included in the proposed registration system?

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

Proposed Part 48 of the Commission's Regulations:

1. Scope
2. Definitions
3. Registration Required
4. Registration Eligibility
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 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. The regulations

set forth the criteria that would be used to determine if an FBOT is eligible to become registered and further provides that it would be unlawful for an FBOT to permit direct access unless the Commission has issued 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 also describes how and where to apply for registration, and the proposal provides for a “limited” registration application process for those FBOTs that are currently relying on staff-issued direct access no-action relief letters.

How would the registration system relate to 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.

What will be the criteria for FBOT registration?

The proposed regulation identifies criteria that FBOTs would 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, the CFTC would evaluate whether an 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.

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

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.

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

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 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.