the following minimum requirements for any hearing:

(1) The hearing shall be fair, shall be conducted before members of the disciplinary panel, and shall be promptly convened after reasonable notice to the respondent; and

(2) If the respondent has requested a hearing, a copy of the hearing shall be made and shall become a part of the record of the proceeding. The record shall not be required to be transcribed unless:

(i) The transcript is requested by Commission staff or the respondent;

(ii) The decision is appealed pursuant to the rules of the swap execution facility; or

(iii) The decision is reviewed by the Commission pursuant to section 8c of the Act or part 9 of this chapter. In all other instances, a summary record of a hearing is permitted.

(d) Decisions. Promptly following a hearing conducted in accordance with the rules of the swap execution facility, the disciplinary panel shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall provide a copy to the respondent. The decision shall include:

(1) The notice of charges or a summary of the charges;

(2) The answer, if any, or a summary of the answer;

(3) A summary of the evidence produced at the hearing or, where appropriate, incorporation by reference of the investigation report;

(4) A statement of findings and conclusions with respect to each charge, and a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each charge;

(5) An indication of each specific rule that the respondent was found to have violated; and

(6) A declaration of all sanctions imposed against the respondent, including the basis for such sanctions and the effective date of such sanctions.

(e) Disciplinary sanctions. All disciplinary sanctions imposed by a swap execution facility or its disciplinary panels shall be commensurate with the violations committed and shall be clearly sufficient to deter recidivism or similar violations by other market participants. All disciplinary sanctions, including sanctions imposed pursuant to an accepted settlement offer, shall take into account the respondent’s disciplinary history. In the event of demonstrated customer harm, any disciplinary sanction shall also include full customer restitution, except where the amount of restitution or to whom it should be provided cannot be reasonably determined.

(f) Warning letters. Where a rule violation is found to have occurred, no more than one warning letter may be issued per rolling twelve month period for the same violation.

(g) Additional sources for compliance. A swap execution facility may refer to the guidance and/or acceptable practices in Appendix B of this part to demonstrate to the Commission compliance with the requirements of §37.206.

Subpart D—Swaps Not Readily Susceptible to Manipulation

§ 37.300 Core Principle 3—Swaps not readily susceptible to manipulation.

The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

§ 37.301 General requirements.

To demonstrate to the Commission compliance with the requirements of §37.300, a swap execution facility shall, at the time it submits a new swap contract in advance to the Commission pursuant to part 40 of this chapter, provide the applicable information as set forth in Appendix C to part 38 of this chapter—Demonstration of Compliance That a Contract is not Readily Susceptible to Manipulation. A swap execution facility may also refer to the guidance and/or acceptable practices in Appendix B of this part.

Subpart E—Monitoring of Trading and Trade Processing

§ 37.400 Core Principle 4—Monitoring of trading and trade processing.

The swap execution facility shall:

(a) Establish and enforce rules or terms and conditions defining, or specifications detailing:
§ 37.401 General requirements.

A swap execution facility shall:
(a) Collect and evaluate data on its market participants’ market activity on an ongoing basis in order to detect and prevent manipulation, price distortions, and, where possible, disruptions of the physical-delivery or cash-settlement process;
(b) Monitor trading in swaps to detect and prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

§ 37.402 Additional requirements for physical-delivery swaps.

For physical-delivery swaps, the swap execution facility shall demonstrate that it:
(a) Monitors a swap’s terms and conditions as they relate to the underlying commodity market; and
(b) Monitors the availability of the supply of the commodity specified by the delivery requirements of the swap.

§ 37.403 Additional requirements for cash-settled swaps.

(a) For cash-settled swaps, the swap execution facility shall demonstrate that it monitors the pricing of the reference price used to determine cash flows or settlement;
(b) For cash-settled swaps listed on the swap execution facility where the reference price is formulated and computed by the swap execution facility, the swap execution facility shall demonstrate that it monitors the continued appropriateness of its methodology for deriving that price; and
(c) For cash-settled swaps listed on the swap execution facility where the reference price relies on a third-party index or instrument, including an index or instrument traded on another venue, the swap execution facility shall demonstrate that it monitors the continued appropriateness of the index or instrument.

§ 37.404 Ability to obtain information.

(a) A swap execution facility shall demonstrate that it has access to sufficient information to assess whether trading in swaps listed on its market, in the index or instrument used as a reference price, or in the underlying commodity for its listed swaps is being used to affect prices on its market.
(b) A swap execution facility shall have rules that require its market participants to keep records of their trading, including records of their activity in the index or instrument used as a reference price, the underlying commodity, and related derivatives markets, and make such records available, upon request, to the swap execution facility or, if applicable, to its regulatory service provider, and the Commission.

§ 37.405 Risk controls for trading.

The swap execution facility shall establish and maintain risk control mechanisms to prevent and reduce the potential risk of market disruptions, including, but not limited to, market restrictions that pause or halt trading under market conditions prescribed by the swap execution facility.

§ 37.406 Trade reconstruction.

The swap execution facility shall have the ability to comprehensively and accurately reconstruct all trading on its facility. All audit-trail data and