COMMODITY FUTURES TRADING COMMISSION

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RIN 3038–AD19

Registration of Foreign Boards of Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is issuing final rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). On November 19, 2010, the Commission requested comment on proposed rules that would establish a registration requirement that applies to foreign boards of trade (FBOT) that wish to provide their identified members or other participants located in the United States with direct access to their electronic trading and order matching systems. After reviewing the comments submitted in response to the proposed rules, the Commission has determined to issue these final FBOT registration rules substantially as originally proposed, with certain modifications.

DATES: *Effective Date*—February 21, 2012.

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I. Background

A. Introduction

On July 21, 2010, President Obama signed the Dodd-Frank Act.[1] Title VII of the Dodd-Frank Act[2] amended the Commodity Exchange Act (CEA or the Act)[3] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

Section 738 of the Dodd-Frank Act amended CEA section 4(b) to provide that the Commission may adopt rules and regulations requiring FBOTs that wish 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 to register with the Commission. Direct access is defined in the statute 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.[4] CEA section 4(b) also authorizes the Commission to promulgate rules and regulations prescribing procedures and requirements applicable to the registration of such FBOTs.

Accordingly, on November 19, 2010, the Commission published a notice of proposed rulemaking that set forth proposed regulations that would establish a registration requirement and related registration procedures and conditions applicable to FBOTs that wish to provide their members or other participants located in the United States with direct access to their electronic trading and order matching system (NPRM).[5] The Commission requested comment on all aspects of the proposed regulations. After thoroughly reviewing the comments submitted in response to the NPRM, the Commission has determined to issue these final rules which are substantially the same as those proposed, with some modifications made in response to certain of the comments received and with a partially revised format, as discussed below.

B. Foreign Boards of Trade and Direct Access

1. History of the No-action Process

Since 1996, FBOT requests to provide members and other participants that are located in the U.S. with direct access to their electronic trading and order matching systems have been addressed

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./Law Regulation/OTCDERIVATIVES/index.htm.*

[2] Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the ''Wall Street Transparency and Accountability Act of 2010.''

[3] 7 U.S.C. 1 *et seq.*

[4] Direct access is defined in CEA section 4(b)(1)(A).

[5] *See Registration of Foreign Boards of Trade*, 75 FR 70974 (November 19, 2010).

by Commission staff in accordance with the no-action process set forth in Commission regulation 140.99.[6] Specifically, such FBOTs seeking to provide direct access to members and participants located in the U.S. have requested, and, where appropriate, received from the relevant division of the Commission, a no-action letter in which division staff represents that, provided the FBOT satisfies the conditions set forth therein, the division will not recommend that the Commission institute enforcement action against the FBOT for failure to register as a designated contract market (DCM) or derivatives transaction facility (DTEF). Since 1996, Commission staff has issued 24 direct access no-action relief letters (formerly referred to as foreign terminal no-action relief letters) to FBOTs, 20 of which remain active.[7] A detailed discussion of the history and evolution of the FBOT no-action process and the scope of the relief provided can be found in the NPRM.[8]

While the no-action process has served a useful purpose, the Commission, given the new authority provided by Congress in the Dodd-Frank Act to promulgate registration requirements applicable to FBOTs that provide direct access, has determined to replace the staff no-action process with generally applicable Commission regulations.

2. Commission Determination To Adopt Formal Registration Rules

In determining to adopt formal registration rules for FBOTs, the Commission has also considered that the no-action process is generally better suited for discrete, unique factual circumstances and for situations where neither the CEA nor the Commission's regulations address the issue presented. The Commission has determined that, where the same type of relief is being granted on a regular and recurring basis, as it has been with respect to permitting FBOTs to provide direct access to their trading systems to specified members and other participants that are located in the U.S., it is no longer appropriate to handle requests for the relief through the no-action process. Rather, such matters should be addressed in generally applicable registration regulations.

By implementing uniform application procedures and registration requirements and conditions, the process by which FBOTs are permitted to provide members and other participants located in the United States 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 Commission also notes that an FBOT registration regime will be more consistent with the statutory authority pursuant to which other countries, including the United Kingdom, Australia, Singapore, Japan and Germany, among others, permit U.S.-based DCMs to provide direct access internationally.

Accordingly, for the reasons noted above and pursuant to the new authority provided by amended CEA section 4(b), the Commission has determined to adopt FBOT registration regulations. The final rules will replace the existing policy of accepting and reviewing requests for no-action relief to permit an FBOT to provide for direct access to its trading system with a requirement that an FBOT seeking to provide such access must apply for and be granted registration with the Commission.[9]

3. Overview of NPRM

As noted above, on November 19, 2010, the Commission published a NPRM in which it proposed regulations that would require FBOTs that wish to provide their members or other participants located in the U.S. with direct access to the FBOT's electronic trading and order matching system to become registered with the Commission. The proposed rules described the types of FBOTs that would be eligible for registration under the proposed regulations and prescribed the application procedures, requirements, and conditions that would be applicable to such registration. The rules were proposed to be codified in new Part 48 of the Commission's regulations. The proposed regulations provided that it would be unlawful for an FBOT to permit direct access to members and other participants in the U.S. unless the FBOT was registered with the Commission. The proposed requirements for registration were divided into the same seven general categories evaluated during the course of a review of a request for FBOT no-action relief: membership criteria, trading system, contracts, settlement and clearing, regulatory authorities, rules and rule enforcement, and information sharing. Pursuant to the proposed regulations, whether the registration requirements are successfully met would be determined by review of the information and documentation submitted by the applicant and, if appropriate, a staff on-site visit to the FBOT and clearing organization and their regulatory authorities to observe and discuss procedures and policies described in the information submitted by the applicant. The proposal also contained the conditions that a registered FBOT would be required to meet to retain its registration, including continued satisfaction of the registration requirements; conditions related to the FBOT's regulation in its home country; satisfaction of comparable international standards; restrictions upon the FBOT's provision of direct access; acknowledgement and agreement to Commission jurisdiction; information-sharing requirements; monitoring for and enforcing compliance with the conditions of registration; conditions specifically applicable to swap trading; reporting obligations; and special conditions that would apply to linked contracts.[10] As proposed, the rules provided for a ''limited'' application process for FBOTs currently operating pursuant to existing no-action relief.[11]

[6] *See, e.g.*, CFTC Letter No. 96–28 (February 29, 1996). Commission regulation 140.99 defines the term ''no-action letter'' as a written statement issued by the staff of a Division of the Commission or of the Office of the General Counsel that it will not recommend enforcement action to the Commission for failure to comply with a specific provision of the Act or of a Commission rule, regulation or order if a proposed transaction is completed or a proposed activity is conducted by the beneficiary.

[7] One no-action relief letter was superseded and three were revoked when the FBOTs ceased operations as regulated or recognized markets. Currently, 14 of the FBOTs with active no-action relief report volume originating from the U.S. via direct access.

[8] 75 FR 70974–76.

[9] In 2006, the Commission issued a Policy Statement in which it endorsed the no-action process for FBOTs that want to provide direct access to their trading systems to U.S.-based participants. *Boards of Trade Located Outside of the United States and No-Action Relief From the Requirement To Become A Designated Contract Market or Derivatives Transaction Execution Facility*, 71 FR 64843 (Nov. 2, 2006) (Policy Statement). With the exception of the Commission's endorsement of the use of no-action relief to permit direct access, which is superseded by this final rule, the Policy Statement remains effective.

[10] CEA section 4(b)(1)(B) defines a linked contract as an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of one or more contracts listed for trading on a registered entity.

[11] The proposed rules would have required that FBOTs operating under existing no-action relief submit a limited application for registration within 120 days of the effective date of the registration rules. An FBOT would be permitted to continue to operate pursuant to the no-action relief during the

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The proposal also set forth the procedures to be followed should an FBOT wish to list additional contracts for trading by direct access after being registered. Finally, the proposal identified certain events that may trigger the revocation of an FBOT's registration.

II. Summary of Comments

A. General Comments

The Commission received 147 comments in response to the NPRM.[12] The comments included 24 comment letters that addressed a variety of substantive issues raised by the proposal. Those 24 comment letters came from entities representing a broad range of interests, including eleven letters representing fourteen FBOTs currently providing direct access to members or other participants in the U.S. pursuant to staff direct access no-action relief letters [13] and three letters from FBOTs that were not currently providing direct access to U.S. participants.[14] The Commission also received comments from a U.S. derivatives marketplace,[15] three industry or trade associations,[16] a non-profit organization,[17] a natural gas company,[18] a foreign regulator,[19] a United States Senator,[20] and the Commodity Market Oversight Coalition.[21]

The Commission also received 94 virtually identical comment letters from self-identified small business owners in the oil and gas industry and/or grocery industry. Each of these letters presented a range of comments spanning several provisions of the Dodd-Frank Act and, with respect to the proposed FBOT regulations, included nearly identical text in which the commenters generally expressed support for the requirement that FBOTs register with the Commission and for the requirements that FBOTs adopt position limits, implement prohibitions on manipulation and excessive speculation, and be subject to ownership caps.[22]

Of the 24 comment letters addressing various substantive FBOT registration issues in the proposed regulations, 17 letters voiced general support for the proposed rules and for the adoption of an FBOT registration process.[23] For example, OMX stated:

> Our overall impression of the proposed rules is that they will create a more transparent and standardized process that will provide a greater legal certainty for FBOTs. We are thus under the impression that the new rules will represent an improvement of the legal process related to FBOTs.

Similarly, Eurex commented:

> Eurex supports the proposed regulations as set forth in the [NPRM] and it values the legal certainty that registration by the Commission will provide. Eurex looks forward to being registered by the Commission as an FBOT and to the fuller participation in the development of the U.S. derivatives industry that it expects will accompany registration.

Each of the generally supportive comments, however, also offered varying critiques that focused on specific issues. These are discussed in greater detail below.

Four of these comment letters generally did not support the proposed rules [24] and one comment letter raised concerns with respect to the impact of FBOT registration on the effectiveness of the Dodd-Frank Act.[25] For example, NYX and ESMA questioned whether a registration regime was superior to the existing no-action process. Specifically, NYX noted, ''[W]e are not convinced that a move from the existing regime to a more formal, rules-based solution is either necessary or desirable.'' ESMA noted that, ''It seems to us that there is no legal provision that would require the CFTC to depart from the present practice of issuing no-action relief letters. [* * *] [T]he new registration procedure and the mandatory application of very comprehensive, ongoing requirements to all FBOTs would be burdensome and costly without any apparent improvements for the safeguard of public interests such as the maintenance of fair and orderly markets, investor protection and the resilience of the market.'' Similarly, LME, while supporting the Commission's desire to establish a standardized regulatory framework for FBOTs that wish to provide direct access to U.S.-domiciled market participants, commented that the approach of requiring FBOTs to register with the Commission would constitute an unnecessary burden on the CFTC and FBOT applicant resources and stated its preference for a comparability-based exemptive approach, which would accomplish the same objectives, rather than a registration regime. HKFE commented that creating unnecessary obstacles to cross-border trading will affect all markets and market participants and limit the use of risk mitigating instruments traded in global markets.

The CME Group expressed concern that the prescriptive nature of the rules

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120-day period and until the Commission notified the FBOT that the application was approved or denied.

[12] The comment file is available on the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=902.*

[13] Dubai Mercantile Exchange (DME), London Metal Exchange (LME), Australian Securities Exchange (ASX), Montreal Exchange Inc. (MX), Intercontinental Exchange (ICE) (owner of ICE Futures Europe and ICE Futures Canada), European Energy Exchange AG (EEX), Hong Kong Futures Exchange Limited (HKFE), BM&F Bovespa (BM&F), Nasdaq OMX Oslo ASA (OMX), NYSE Euronext (NYX) (operator of three FBOTs, Liffe Administration and Management, Euronext Paris SA, and Euronext Amsterdam N.V.), and Eurex Deutschland (Eurex).

[14] Osaka Securities Exchange (OSE), Natural Gas Exchange, Inc. (NGX), and Bursa Malaysia Derivatives Exchange (Bursa Derivatives). A direct access no-action letter was issued to OSE on June 1, 2011. NGX is currently operating as an exempt commercial market (ECM), and will continue to do so under the ECM grandfather relief provided for in the Dodd-Frank Act.

[15] CME Group, which includes four CFTC-registered DCMs: The Chicago Mercantile Exchange Inc. (CME), the Board of Trade of the City of Chicago, Inc. (CBOT), the New York Mercantile Exchange, Inc. (NYMEX), and the Commodity Exchange, Inc. (COMEX).

[16] Futures and Options Association (FOA), Air Transport Association of America (ATA) (two comment letters), and Petroleum Marketers Association of America and the New England Fuel Institute (Petroleum Marketers).

[17] Better Markets, Inc. (Better Markets). Better Markets describes themselves as a non-profit organization that promotes the public interest in capital and commodity markets.

[18] BG Americas & Global LNG (BG Americas).

[19] European Securities and Markets Authority (ESMA).

[20] Senator Carl Levin, Chairman of the United States Senate Permanent Subcommittee on Investigations.

[21] The Commodity Market Oversight Coalition (CMOC) states that it represents an array of interests, including the interests of commodity producers, processors, distributors, retailers, commercial and industrial end-users, and average American consumers and that it was established to promote government policy and regulation in the commodity trading markets that preserve the interests of *bona fide* hedgers and consumers and the health of the broader economy.

[22] Each of these letters contained a similar short paragraph specifically addressing the proposed FBOT rules. A representative letter stated: ''I support the requirement that FBOTs register with the CFTC and make their trading data available as well as requiring that they adopt position limits and implement prohibitions on manipulation and excessive speculation. They should also be subject to ownership caps.'' The Commission also received a brief comment from a private citizen. In addition, the comment file includes 26 comments submitted in response to the Commission's reopening of the comment period for several Dodd-Frank related rulemakings. *See Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR 25274 (May 4, 2011) (extending the comment deadline for multiple Dodd-Frank Act rulemakings to June 3, 2011). None of the comments submitted in response to the reopening of the comment period specifically addressed the proposed FBOT registration regulations and, therefore, they are not addressed in this document.

[23] *See* letters from ASX, BM&F, Bursa Derivatives, Eurex, EEX, LME, MX, OMX, NGX, OSE, FOA, ATA, BG Americas, Petroleum Marketers, CMOC and Senator Levin. ICE commented that the CFTC ''generally strikes the right balance with the proposed rulemaking.''

[24] NYX, HKFE, ESMA, and CME Group.

[25] Better Markets.

may result in retaliatory, anti-competitive action by foreign regulators. CME Group commented that:

> [W]e have significant concern that the proposed rules are overly prescriptive and will have the effect of engendering retaliatory action by foreign regulators that will inhibit our ability to continue to grow our business and compete effectively in the current global environment.

CME Group also argued that since the Dodd-Frank Act did not intend to grant the Commission general regulatory authority over FBOTs, the imposition of an information gathering process with limited utility would do little more than stretch already limited Commission resources.

Better Markets argued that enabling FBOTs to provide direct access to members and other participants in the U.S. would ''undercut[] the effectiveness of the Dodd-Frank Act'' unless FBOTs were subject to regulatory requirements that are ''the same as or equivalent to the Dodd-Frank Act structure.'' Better Markets expressed concern that, even if there are parallel systems that are adequately structured in foreign jurisdictions, there is a risk that the regulatory regime will not be administered similarly to the markets subject to Commission oversight.

B. Specific Comments

The specific issues raised by commenters can be grouped generally into nine categories and include the following: Application for registration; standard of review; contracts; direct access definition; scope of registration; registration requirements and conditions; modification of registration requirements; other concerns; and ongoing review of registered FBOTs. These concerns and the Commission's conclusions with respect to them are discussed below.

1. Application for Registration

a. Treatment of FBOTs With Existing No-Action Relief

Proposed regulation 48.6 provides that FBOTs currently providing direct access pursuant to a Commission staff no-action letter would be required to apply for registration within 120 days of the effective date of the FBOT registration regulations, but would permit them to file a limited application, as described in the proposed regulation. Eurex expressly supported the proposed limited application process; ASX welcomed the formalization of the registration requirements. Twelve of the comment letters, however, were in favor of either further narrowing the scope of the limited application process or completely grandfathering FBOTs currently operating pursuant to no-action relief. Several commenters also requested that the time period for submitting a limited application be expanded.

(i) Grandfathering and the Scope of the Limited Application

Eight of the twelve commenters, including commenters representing 11 FBOTs providing direct access to their trading systems pursuant to existing no-action relief[26] and the CME Group and FOA, specifically requested that the CFTC significantly narrow proposed § 48.6 to either provide grandfathered registration to FBOTs operating under existing no-action relief or to require FBOTs applying for registration to supply only that information which (1) has materially changed since the time the FBOT's no-action relief was granted, (2) was not previously filed with the Commission or (3) relates to newly imposed registration requirements. The commenters generally argued that the limited application process set forth in proposed § 48.6 is too burdensome and is unnecessary given that FBOTs and their regulatory regimes were reviewed by Commission staff during the process of issuing a no-action letter.

FOA commented that FBOTs currently operating under no-action relief should not have to reapply for approval to allow direct access to their markets and recommended that the CFTC should principally rely on information previously provided by the FBOT and its regulator to satisfy the proposed registration requirements and should identify for each FBOT operating under a no-action letter what specific additional information is required. NYX generally agreed with this recommendation and further suggested that, if a limited application for registration is necessary, the FBOTs should be required to consult with the Commission in order to identify which specific information not previously submitted would be necessary to demonstrate compliance with the registration requirements. BM&F commented that where an FBOT had been granted no-action relief following adoption by the Commission of the 2006 Policy Statement, that FBOT should only be required to certify that there have been no material changes to the information or representations in its request for no-action relief or, if there have been changes, to identify those changes and demonstrate how they would be in compliance with the registration rule. ICE commented that the FBOT should only be required to submit additional relevant information necessary to update the Commission's understanding of the foreign regulatory regime.

The Commission does not believe that it would be prudent to grandfather FBOTs that are operating under existing no-action relief without any further review to determine that the registration requirements set forth in § 48.7 are being met. FBOT requests for no-action relief were assessed based upon the information and documentation presented at the particular time of the request (some as early as 1999), were based upon a comparison of the regulatory regimes in the U.S. and the applicable foreign jurisdiction that existed at the time, were subject to varying standards of review that applied at the time (which have changed as statutes and policies have evolved), and were reviewed on a case-by-case basis. Just as the Dodd-Frank Act represents a significant change in the regulatory approach in the U.S., many foreign jurisdictions have changed their approaches since the time the existing no-action letters were granted as well.

The Commission also does not believe that it would be either feasible or appropriate for the Commission staff to ascertain for each FBOT operating under existing no-action relief the precise information or documentation in its individual no-action request submission that would need to be updated or revised in order to satisfy registration requirements. The FBOTs are in a better position to recognize their own particular circumstances and to identify any information and documentation that may require updating in light of those changes. This is especially true of information regarding the relevant foreign regulations to which the FBOT is presently subject, as these may have differing applicability depending upon the FBOT's particular business model. The FBOT should be afforded the opportunity to provide materials demonstrating that the foreign regime currently is comparable and comprehensive to the regulatory regime in the United States.

In response to the comments received, the Commission has determined to modify the limited application documentation requirements in one aspect. The proposed limited application process required that, to the extent an FBOT operating under existing no-action relief intends to rely upon previously submitted information or documentation to demonstrate that it satisfies the registration requirements,

[26] BM&F, DME, EEX, HKFE, ICE, MX, OMX, and NYX.

the FBOT must resubmit the information or documentation, identify the specific requirements for registration set forth in proposed § 48.7 that are satisfied by the resubmitted information, and certify that the information remains current and true. The Commission has determined to streamline the § 48.6 application requirements for any FBOT whose original no-action relief request was submitted electronically and remains on file with the Commission staff.[27] In lieu of re-transmitting to the Commission previously submitted information and documentation, such FBOTs would be permitted to simply refer to each portion of their original submission that satisfies a particular registration requirement, identify the specific registration requirement that is fulfilled by that section, and certify that the information or documentation originally provided remains current and true. The FBOT would continue to be required to submit new information or documentation, to the extent that its original application would not adequately demonstrate that the FBOT would be in compliance with one or more of the registration requirements. This typically would be necessary where one of the registration requirements, such as a requirement applicable to clearing and settlement, imposes a standard that was not applied at the time of the original application for no-action relief.

(ii) 120 Days To File Limited Application

Seven commenters, including six FBOTs and one industry association, requested that the proposed 120-day time period within which an FBOT operating under existing no-action relief would be required to file a limited application be extended. Four specifically asked that the period be lengthened to 180 days,[28] while another asked for a year.[29] Two entities commented that the registration rules should provide that FBOTs with existing no-action relief may continue to operate as such as long as they submit an application within the 120-day period, which is determined in good faith by the applicant to be complete.[30] Such commenters expressed concern that there may be an extended period of legal uncertainty after the 120-day period, but before the Commission acted upon the application.

In response to these comments the Commission has determined to adopt the proposal with certain modifications. The final regulations provide that the required timeframe within which an FBOT operating pursuant to existing no-action relief is required to submit a limited application for registration, determined in good faith by the applicant to be complete, is 180 days from the effective date of the FBOT registration rules.[31] The final rule also provides legal certainty in that § 48.6 provides that an FBOT ''may continue to operate pursuant to the existing no-action relief, subject to the terms and conditions contained therein, during the 180-day period, while the Commission is reviewing its application, and until the Commission approves or disapproves the application or otherwise withdraws the existing no-action relief.'' Thus, FBOTs could continue to provide for direct access pursuant to the no-action relief during the 180-day period and, if they submitted timely and complete applications for registration, until such time as the Commission acts upon the registration applications.

(iii) Treatment of FBOTs That Have Not Obtained No-action Relief

NGX asked whether FBOTs with pending applications could file a limited application and stated that, if so, the review of such applications should take precedence over the review of applications of FBOTs currently operating under existing no-action relief. Bursa Derivatives asked if the Commission would take into consideration any Regulation 30.10 relief granted by the Commission to an FBOT or any visit made to an FBOT in the Regulation 30.10 review when evaluating such FBOT's application under the proposed registration process.[32]

In consideration of the comments concerning limited applications for registration, the Commission has determined that an FBOT with a pending request for direct access no-action relief should be permitted to file a limited application for registration, recognizing that some of the required information and documentation is likely to have been recently submitted and, therefore, up-to-date. Thus, § 48.6 has been modified to provide that an FBOT that has submitted a complete application for no-action relief that is pending as of the effective date of the final rule could, as part of its application for registration, identify information or documents provided in its request for no-action relief that would satisfy particular registration requirements. Those aspects of the registration requirements that were not addressed in the materials submitted in connection with the no-action request would have to be addressed directly in the FBOT's registration application. With respect to the question of precedence of review, the Commission is not assigning precedence to any group of applicants. The Commission does, however, anticipate that the applications of FBOTs with pending relief requests generally will be submitted, and acted upon, before those of FBOTs which have no-action relief, largely because the latter FBOTs can continue to operate pursuant to the existing no-action relief during the 180-day timeframe for submission of an application and so long as a complete and timely application is submitted. In contrast, those FBOTs with pending relief requests cannot provide for direct access until they submit an application and receive an Order of Registration.

With respect to consideration of any regulation 30.10 relief granted by the Commission to an FBOT or related visits in evaluating the FBOT's application for registration, the Commission believes it would be appropriate to consider such information only to the extent that it is

[27] Documents submitted electronically can be more easily identified and located and can be retransmitted quickly and at less cost than documents in hard copy. It is also easier to identify and highlight those segments of an electronically submitted document that would satisfy a current requirement of registration.

[28] BM&F, EEX, LME, and MX.

[29] ICE.

[30] NYX and FOA.

[31] If, at any time after the 180-day deadline but before a limited application is approved or disapproved, the Commission determines that the application is materially incomplete, the Commission may, after providing the FBOT with notice and an opportunity to respond to the determination of incompleteness, withdraw the existing no-action relief if the Commission determines that the application cannot be made complete in a timely manner.

[32] A Rule 30.10 order permits firms that are members of a self-regulatory organization and subject to regulation by a foreign regulator to conduct business from locations outside of the U.S. for U.S. persons on non-U.S. boards of trade without registering under the CEA, based upon the firm's substituted compliance with a foreign regulatory structure found comparable to that administered by the Commission under the CEA. Among the issues considered by the Commission in determining whether to grant Rule 30.10 relief based on a foreign regulatory or self-regulatory authority are the authority's: (i) Requirements relating to the registration, authorization, or other form of licensing, fitness review, or qualification of persons through whom customer orders are solicited and accepted; (ii) minimum financial requirements for those persons that accept customer funds; (iii) minimum sales practice standards, including risk disclosures, and the risk of transactions undertaken outside of the United States; (iv) procedures for auditing compliance with the requirements of the regulatory program, including recordkeeping and reporting requirements; (v) standards for the protection of customer funds from misapplication; and (vi) arrangements for the sharing of information with the United States.

relevant to particular registration requirements (*e.g.,* requirements that members be fit and proper and other foreign regulatory regime standards applicable to market participants) and is identified as such by the FBOT. The Commission notes that there is limited overlap between the factors considered when granting regulation 30.10 relief and those that will be examined in connection with FBOT registration. Regulation 30.10 review primarily is focused on the foreign regulatory standards applicable to market participants. While regulation 30.10 relief could inform the Commission's decision to register an FBOT, it would not be an appropriate substitute for the comparability and comprehensiveness analysis required under the FBOT registration regulations.

b. Timeliness of Commission Review of an Application

The proposed regulations did not include a proposed timeline for completion of Commission staff review of an application. Bursa Derivatives suggested that the Commission adopt a timeline of 180 days for the Commission to notify FBOTs whether an application has been approved or denied. The commenter noted that this would be consistent with the 180 days allotted for reviewing a designated contract market application.

The Commission has determined not to adopt a firm timeline for completion of Commission staff review of an application. The Commission is committed to completing its review of applications for FBOT registration within a year or in as timely a manner as circumstances and resources will allow. However, the Commission can neither predict the total number of applications for registration that will be submitted nor whether such applications will be received simultaneously or over a period of time and, thus, cannot be assured that it would have sufficient resources at all times to meet such a self-imposed deadline. The Commission is likely to receive applications from most of the 20 FBOTs currently operating under existing no-action relief in addition to applications from other FBOTs that wish to register. The Commission notes that the lack of a specific deadline for the review of FBOT registration applications will not have a significant impact on those FBOTs currently able to provide direct access pursuant to a staff no-action letter that submit timely applications for registration. As previously noted, the final regulations permit such FBOTs to continue to provide direct access to FBOT members and other participants located in the U.S. during the review period, subject to compliance with the terms and conditions of their no-action relief letters.

2. Standard of Review

a. Need for Registration

One foreign regulator, ESMA, questioned whether replacing the practice of issuing no-action letters with a process whereby FBOTs would register with, and become subject to, the jurisdiction of the Commission would provide sufficiently enhanced public safeguards to outweigh the burdens imposed. Noting that section 738 of the Dodd-Frank Act seems to provide the Commission full flexibility on whether and how to implement the rules on registration, ESMA stated that: ''Since the CFTC has also verified in the past that a FBOT and its clearing organisation are subject to comprehensive regulation and comparable oversight by the home regulatory authority, * * * the creation of new US regulatory measures with extra-territorial application should be avoided as far as possible and replaced by effective co-operation between the home and host regulatory authorities. Jurisdiction should indeed generally be exercised by the home country alone. The necessary cooperation could be ensured by an MoU determining how the home and the host authority should collaborate, exchange information and conduct common reviews and inspections.'' [33]

HKFE and MX commented that the CFTC has already determined that FBOTs currently allowed to operate in the U.S. are subject to comprehensive and comparable regulation in their home jurisdictions under the no-action relief regime. HKFE further stated that, therefore, a substantive or a rule-by-rule review by the CFTC for the purposes of FBOT registration may not be necessary or appropriate except where the CFTC has fundamental concerns about a jurisdiction's regulations, regulatory objectives or practices.

As previously noted, requests for no-action relief were submitted to and reviewed by Commission staff and not by the Commission itself and the letters granting no-action relief are not binding upon the Commission. Moreover, in analyzing requests for no-action relief, staff did not review the requests under the same standards that will be universally applied under the final regulations. For example, staff did not specifically consider whether an FBOT or its clearing organization was subject to ''comprehensive regulation and comparable oversight by the home regulatory authority.'' Rather, staff's standard of review has ranged from determining that the FBOT is regulated by a legitimate regulatory authority to determining that the FBOT and its regulatory authority support and enforce standards for trading and customer and market protection that are equivalent to those supported by the CFTC and its regulated DCMs.

The Commission believes that the application procedures contained in the final registration regulation would provide for appropriate review. While the rule would create a new registration category, that category would operate pursuant to open and transparent standards and procedures that may not have been uniformly applied with respect to FBOT no-action letters. The proposed regulatory measures are applicable only to FBOTs that choose to provide for direct access to their trading systems to persons located in the U.S. In addition, the Commission believes that the rule, as proposed, would encourage effective co-operation between the home and host regulatory authorities in that it, among other things, provides for expanded information sharing between the regulatory authorities. Finally, with respect to the comment that the proposal is creating new U.S. regulatory measures with extra-territorial application, the Commission notes that Congress has authorized the registration of FBOTs in the Dodd-Frank Act. Moreover, the FBOT registration process relies significantly upon the Commission's determination that the FBOT's home country regulatory authority provides for comparable, comprehensive supervision and regulation. The Commission finds it particularly noteworthy that other countries that permit direct access, including the UK, Japan, Singapore, Hong Kong, Germany and Australia, among others, do so under a registration or licensing scheme. Accordingly, the Commission believes that the establishment of the FBOT registration regime in the final rule is generally consistent with international practices.

b. Foreign Supervision and the Comparable, Comprehensive Determination

As required by CEA section 4(b)(1)(A)(i), proposed § 48.5(d)(2) provided that the Commission, when reviewing an application for FBOT registration, will consider whether the FBOT and its clearing organization are subject to comprehensive supervision

[33] ESMA.

and regulation by the appropriate governmental authorities in their home country that is comparable to the comprehensive supervision and regulation to which DCMs and derivatives clearing organizations (DCO), respectively, are subject in the United States. Seven commenters specifically addressed this provision, offering critiques of the Commission's approach to evaluating an FBOT's home regulatory regime.[34]

Two commenters recommended that the Commission make a determination as to whether an FBOT is subject to a comparable comprehensive regulatory regime on a jurisdiction-by-jurisdiction basis where appropriate.[35] For example, if more than one FBOT is subject to the regulatory regime in the United Kingdom, the Commission could make a single determination as to the comparability and comprehensiveness of the regulatory regime in the United Kingdom.

In consideration of these comments, the final regulation, in the application form for registration, Form FBOT,[36] provides for a jurisdiction-based review of the comparability of the foreign regulatory regime when multiple FBOTs that are subject to the same regulatory regime are applying for registration. Specifically, the regulation, through the Form FBOT, provides that multiple FBOTs that are subject to the same regulatory regime and that are applying for registration at the same time may collectively provide information regarding the regulatory regime under which they operate. The information may be provided by the FBOTs themselves, or by the applicable foreign regulatory authority.

The Commission does not agree, however, that a determination that an FBOT operating in one jurisdiction should be registered eliminates the need to conduct a subsequent inquiry into the laws and regulations applicable to a different FBOT in the same jurisdiction that applies for registration at a different time. Additionally, a single jurisdictional analysis of comprehensiveness and comparability may not be able to take into account the fact that different FBOTs operating in the same jurisdiction may be subject to different regulations, depending upon a host of factors including, among other things, their business structure, the participants they accept, the products they trade and the exceptions and exemptions provided in the relevant regulatory regime. Accordingly, two FBOTs operating in the same country may be subject to regulation that differs in substantive ways. Moreover, financial markets worldwide are currently in an enhanced state of regulatory flux, making it a particularly inopportune time to state that once a jurisdiction is deemed comparable, it will be deemed comparable for the purpose of all future applications.[37]

(i) Consideration of the Totality of Regulation

Eurex, noting that in many jurisdictions the concept of self-regulation is not as established as in the U.S. and that foreign exchanges are not empowered in the same way as DCMs, recommended that, in considering the comparability of regulation, the CFTC explicitly incorporate that it may rely on the totality of the regulation—self and governmental—of the FBOT in evaluating the FBOT for comparable comprehensive supervision and regulation. The Commission has determined to adopt the rule as proposed, but notes that consistent with this Eurex comment, the Commission will rely on the totality of the regulation of the FBOT and its clearing organization in evaluating whether they are subject to comparable comprehensive supervision and regulation.

(ii) Comparability Reviews

FOA expressed concern that the proposed registration regulations would change the approach to comparability used under the existing no-action review process into what is effectively a rules-equivalence approach and that this could lead to a ''line by line'' examination of the European Union's approach to the regulation of derivatives transactions, central counterparties and trade repositories. FOA commented that a ''line by line'' examination of the foreign regulator's approach would complicate cross-border business and increase the risk of inadvertent breaches.

The Commission has determined to adopt the rule as proposed. As in the case of the review performed under the no-action review process, the Commission's determination of the comparability of the foreign regulatory regime to which the FBOT applying for registration is subject will not be a ''line by line'' examination of the foreign regulator's approach to supervision of the FBOTs it regulates. Rather, it will be a principles-based review conducted in a manner consistent with the part 48 regulations pursuant to which the Commission will look to determine if that regime supports and enforces regulatory objectives in the oversight of the FBOT and the clearing organization that are substantially equivalent to the regulatory objectives supported and enforced by the Commission in its oversight of DCMs and DCOs.

(iii) Limitations of Comparability Reviews

CME Group suggested that the Commission's analysis should be more narrowly tailored and that the Commission should limit its inquiry to questions regarding the comparability of the regulatory regime in the FBOT's home jurisdiction, focusing on (1) the regulatory regime in the FBOT's home jurisdiction, (2) the FBOT's status in its home jurisdiction and its rules and enforcement thereof, and (3) any existing information-sharing agreements between the FBOT, the Commission, and the home jurisdiction regulator. CME Group argued that such an approach would focus the Commission's attention on the legitimacy of the home regulator rather than on the broader inquiries that have informed the no-action process.

The Commission has determined to adopt the rule as proposed. The Commission does not believe that its review of an FBOT seeking to provide direct access to its trading system to persons located in the U.S. should be

[34] Eurex, FOA, LME, EEX, OMX, Better Markets, and CME Group.

[35] LME and EEX. EEX commented that all trading venues recognized as a ''Regulated Market'' under the European Union's (EU) Markets in Financial Instruments Directive (MiFID) should be deemed fit to meet the regulatory standards of a registered FBOT. LME commented that the Commission should take the same jurisdictional approach with respect to the review of clearing organizations.

[36] The proposed rules included an appendix that identified the information required in, and provided guidelines for submitting, an application for registration as an FBOT. That appendix included detailed descriptions of the minimum required documentation and information that should be included in an application. In these final rules, the Commission has revised the proposed appendix to include the submission requirements identified therein in standardized application forms, Form FBOT and Supplement S–1 to Form FBOT. Form FBOT is to be completed by an FBOT applying for registration and Supplement S–1 is to be completed by the clearing organization affiliated with the FBOT. The substance and content of Form FBOT and Supplement S–1 are parallel to those requirements and guidelines that were originally included in the appendix to the proposed rules.

[37] Notwithstanding the above, in a situation where an FBOT applying for registration is located in the same jurisdiction and subject to the same regulatory regime as a registered FBOT, the Commission believes that it would be acceptable for the FBOT applying for registration to include by reference, as part of its application, information about the regulatory regime that is posted on the Commission's Web site. The FBOT applying for registration must specifically identify the applicable information and certify that the information thus included in the application is directly applicable to it and remains current and valid.

restricted to the three areas suggested by the commenter. The Commission believes that the broader review contemplated by the proposed regulations, which is an outgrowth of the review conducted during the no-action process, is necessary to ensure the protection of persons located in the U.S. that will be trading by direct access on the FBOT. Accordingly, the final regulations continue to require the FBOT to provide sufficient information and to demonstrate that the registration requirements set forth in § 48.7 are satisfied (*e.g.,* information and documentation on the relevant membership standards, the contracts to be made available in the U.S. and the automated trading and clearing and settlement systems). The Commission believes that its review of the information and documentation provided in these areas is necessary to provide greater assurance that, among other things, the members of the FBOT and its clearing organization members are subject to appropriate standards, the contracts to be made available are not readily susceptible to manipulation, all linked contracts are identified, the trading system complies with the Principles for Screen-Based Trading developed by the Technical Committee of the International Organization of Securities Commissions (IOSCO Principles) [38] and produces an adequate audit trail, and the clearing and settlement systems satisfy appropriate standards.

(iv) Reconfirmation and Withdrawal of Registration

Better Markets commented that proposed § 48.8(a)(2)(iii), which would impose continuing requirements on the foreign regulatory structure to maintain its laws governing the FBOT, was too narrow and too focused on the letter of the law, rather than the realities of the marketplace. Better Markets proposed an annual reconfirmation and demonstration of the appropriateness of the FBOT's regulatory regime and, further, that an FBOT's registration should be discontinued if the foreign regulatory regime changes in ways such that the FBOT would not be able to qualify for initial registration.

The Commission has determined to adopt the rule as proposed, with slight modifications. The Commission notes that the regulations contain multiple provisions designed to demonstrate that the FBOT continues to be subject to an appropriate regulatory regime. For example, § 48.8(a)(1) conditions continued FBOT registration upon the FBOT's and its clearing organization's satisfaction of all of the registration requirements set forth in § 48.7; § 48.8(a)(2)(i) conditions registration upon the FBOT continuing to satisfy the criteria for a regulated market or licensed exchange pursuant to the regulatory regime described in its application and continuing to be subject to oversight by the regulatory authorities described in the registration application; § 48.8(a)(2)(ii) imposes a similar condition with respect to the FBOT's clearing organization; § 48.8(a)(2)(iii) conditions registration upon the laws, systems, rules, and compliance mechanisms of the regulatory regime applicable to the FBOT continuing to require the FBOT to maintain fair and orderly markets, prohibit fraud, abuse, and market manipulation, and provide that such requirements are subject to the oversight of appropriate regulatory authorities; and § 48.8(a)(3) conditions continued registration upon the FBOT's and, if the FBOT's clearing organization is not a DCO, the clearing organization's satisfaction of certain internationally recognized standards.

In addition, § 48.8(b)(1)(iii)(G) requires that the FBOT and its clearing organization, or their respective regulatory authorities, as applicable, provide to the Commission annually a written description of any material changes to the regulatory regime to which the foreign board of trade or the clearing organization is subject that have not been previously disclosed or a certification that no material changes have occurred. Further, proposed § 48.9(b)(2) provides that the Commission may revoke an FBOT's registration, after appropriate notice and an opportunity for a hearing, if there is a material change in the regulatory regime applicable to the FBOT or its clearing organization. The Commission has modified § 48.9(b)(2) to provide that the Commission may revoke an FBOT's registration, after appropriate notice and an opportunity to respond, if there is a material change in the regulatory regime applicable to the FBOT or its clearing organization such that the regulatory regime no longer satisfies any registration requirement or condition for registration applicable to the regulatory regime. The Commission believes that in this instance, as in other instances in the final rule where the FBOT is provided appropriate notice by the Commission of an issue about which it is expected to communicate with the Commission, an opportunity to respond is adequate for the purpose of addressing the issue.

c. International Standards

The requirements for and conditions of registration set forth in proposed § 48.7 and § 48.8, respectively, would require an FBOT and its clearing organization to observe specified international standards. In order to become registered, an FBOT would be required to successfully demonstrate that its trading system complied with the current IOSCO Principles.[39] Unless the FBOT's clearing organization is registered with the Commission as a DCO, the FBOT also would be required to demonstrate that the clearing organization observed: (1) The current Recommendations for Central Counterparties jointly issued by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of IOSCO, as updated, revised or otherwise amended, or (2) successor standards, principles and guidance for central counterparties or financial market infrastructures adopted jointly by CPSS and IOSCO's Technical Committee (RCCPs). OMX commented that, in order to provide more flexibility, the registration requirements should refer to ''recognized international standards,'' rather than specific international regulations.

The Commission has determined to adopt §§ 48.7(b)(1) and (d)(1) and § 48.8(a)(3) substantially as proposed. The use of a singular set of internationally recognized standards provides clarity, consistency and certainty to the application requirements and the standards

[38] The IOSCO Principles were formulated by eight jurisdictions which comprised Working Party 7 (Working Party) of the Technical Committee of IOSCO under the chairmanship of the Commission. The Working Party's mandate included, among other things, the identification of issues related to screen-based trading systems for derivative products. In considering the special concerns for screen-based trading systems, the Working Party identified and addressed the following issues: transparency, order execution algorithms, operational issues, security and system vulnerability, access, financial integrity, disclosure, and the role of system providers, and articulated for each issue a broad principle to assist regulatory authorities in overseeing screen-based trading systems. The IOSCO Principles were adopted by IOSCO on November 15, 1990 and set out in broad terms the international consensus as to the regulatory considerations to be addressed in reviewing mechanisms for cross-border screen-based trading. The Commission adopted the IOSCO Principles as a statement of regulatory policy for the oversight of screen-based trading systems for derivative products. *Policy Statement Concerning the Oversight of Screen-Based Trading Systems.* 55 FR 48670 (Nov. 21, 1990).

[39] A review of the FBOT requests for no-action relief to permit direct access reveals that most of the applicants stated that their regulatory authority has endorsed the IOSCO Principles. Several of the FBOTs indicated that that their regulatory authority, in its review of the FBOT's trading system during development and/or on an ongoing basis, specifically took into account the IOSCO Principles.

identified in the proposal are directly relevant to the review to be afforded FBOTs and their clearing organizations. In addition, due to the breadth of participation by sponsoring organizations [40] and the approval of the standards by IOSCO and CPSS, these principles are considered the premier standards in the industry and are likely to have greater global recognition than similar regional standards.

The Commission did not receive comments specifically related to the requirement that an FBOT's clearing organization observe any ''successor standards, principles and guidance'' to the current RCCPs that may be jointly issued by CPSS and IOSCO in the future. The Commission wishes to clarify, however, that such standards would include, to the extent applicable, the ''Principles for Financial Market Infrastructures'' (FMI Principles) [41] that CPSS and the IOSCO Technical Committee intend to finalize in early 2012 and that, when effective, would replace the current RCCPs as the CPSS/IOSCO standards applicable to central counterparties. In March 2011, CPSS and the IOSCO Technical Committee publicly issued a ''Consultative Report'' that included the then-current draft of the FMI Principles and that requested comment upon the draft by July 29, 2011. CPSS and the IOSCO Technical Committee are in the process of reviewing the comments received and finalizing the FMI Principles. The Commission would not expect an FBOT's clearing organization to observe the FMI Principles until the effective date thereof established by CPSS and IOSCO. However, because it is anticipated that several FBOTs may wish to apply for registration between the time that the final FMI Principles are published and the time that the FMI Principles become effective and that clearing organizations for FBOTs may find that they already observe the FMI Principles, an FBOT that applies for registration after the FMI Principles are published in final form may demonstrate that its clearing organization observes those principles in lieu of demonstrating observance of the RCCPs.

d. Clearing Standards

The FBOT registration requirements set forth in proposed § 48.7 include certain substantive standards that would have to be satisfied by an FBOT's clearing organization or the FBOT itself, if it is performing its own clearing functions. Among other things, an FBOT would be required to demonstrate that the members of its clearing organization are fit and proper and meet appropriate financial and professional standards; that the clearing organization is registered with the Commission as a DCO or observes the RCCPs or successor standards; that the clearing organization is in good regulatory standing in its home country jurisdiction; that the regulatory authorities governing the activities of the clearing organization provide comprehensive supervision and regulation comparable to that provided by the Commission to DCOs and engage in ongoing supervision and oversight of the clearing organization; that the clearing organization has the capacity to detect, investigate and sanction persons who violate its rules; and that the clearing organization has sufficient compliance staff and resources.

(i) DCOs

LME and CME Group commented that if an FBOT's clearing organization is registered with the Commission as a DCO, the FBOT should not be required to establish that the clearing organization satisfies the remaining criteria set forth in the proposed regulation. The Commission has determined to adopt the approach suggested by the commenters. Much of the criteria set forth in § 48.7 are likely to have been reviewed in connection with the clearing organization's application for a registration as a DCO and any additional review would be redundant. Accordingly, proposed § 48.7 has been modified to reflect that the registration requirements applicable to an FBOT's clearing organizations may alternatively be demonstrated by a statement from the clearing organization that it is registered and in good standing with the Commission as a DCO.

(ii) RCCPs Standards for Non-DCOs

Certain commenters questioned the appropriateness of the proposal's requirement that clearing organizations that are not CFTC-registered DCOs would have to demonstrate compliance with the RCCPs. MX suggested that the Commission should instead require the clearing organization to demonstrate that the regulations, standards, and policies of the applicable foreign regulator are comparable to those of the Commission; ICE suggested that the CFTC should rely on the expertise of the foreign regulator to regulate its own clearing organizations. As noted above, OMX recommended that the registration requirements permit clearing firms to demonstrate that they satisfy certain recognized international standards for central counterparties, rather than referring specifically to the RCCPs. By contrast, Eurex suggested that the inquiry into a firm's clearing organization should be restricted to a demonstration that the RCCPs are satisfied.

NYX suggested that if the proposed RCCP standard is adopted, the CFTC should obtain confirmation of that fact from the firm's home country regulator, in lieu of requiring the information from the clearing organization itself. Bursa Derivatives suggested that the Commission should clarify that a clearing organization's reasons for non-compliance with certain RCCPs would be considered by the Commission and asked whether a time period would be specified for the clearing organization to comply with all of the RCCPs in such instance.

The Commission has determined to adopt §§ 48.7(d)(1) and 48.8(a)(3)(ii) substantially as proposed. As noted above, the Commission believes that requiring an FBOT's clearing organization to demonstrate that it observes a singular set of internationally recognized standards provides clarity, consistency and certainty to the application requirements. Such representations also enable the Commission to obtain assurance that the clearing organizations used by the FBOTs observe, among other things, appropriate criteria for participation; measurement and management of credit exposures; management of custody, investment and operational risk; margin; financial resources; default procedures; governance; and transparency without specifically requiring the clearing organizations to demonstrate compliance with requirements that are identical to those that would be

[40] The current RCCPs were finalized in 2004 by a CPSS–IOSCO Task Force that included representatives from the following entities: National Bank of Belgium; Comissão de Valores Mobiliários, Brazil; People's Bank of China; Czech National Bank; European Central Bank; Autorité des Marchés Financiers, France; Bank of France; Deutsche Bundesbank; BaFin (German Financial Services Authority); Securities and Futures Commission, Hong Kong; Reserve Bank of India; Securities and Exchange Board of India; Commissione Nazionale per le Società e la Borsa, Italy; Bank of Japan, Financial Services Authority, Japan; Malaysian Securities Commission; Bank of Mexico; Netherlands Authority for Financial Markets; Saudi Arabian Monetary Agency; Comisión Nacional del Mercado de Valores, Spain; Monetary Authority of Singapore; Bank of England; Financial Services Authority, United Kingdom; Securities and Exchange Commission; CFTC; Board of Governors of the Federal Reserve System; Federal Reserve Bank of New York; International Monetary Fund; and the World Bank. The recommendations were initially released in a consultative document that requested public comment. The final version incorporates consideration of the comments received from central banks, regulators and the operators of and participants in central counterparties.

[41] Not all of the FMI Principles are applicable to central counterparties.

imposed upon a DCO. The use of an international standard that is substantially similar, though not identical, to the requirements imposed upon U.S. registrants is consistent with the directive in CEA section 4(b)(1)(A)(i) that the Commission consider whether the relevant regulatory regime is ''comparable'' and ''comprehensive.'' It is also consistent with section 752 of the Dodd-Frank Act, which seeks to promote consistency in global regulation of swaps and futures contracts and the requirement set forth in §§ 48.7(b)(1) and 48.8(a)(3)(i) that the FBOT itself comply with the IOSCO Principles. The RCCPs were developed with broad participation and comment from entities from multiple nations and have been approved by both IOSCO's Technical Committee and the CPSS. The same will be true of the FMI Principles, when finalized. Accordingly, the Commission believes that the RCCPs and their successor standards are the appropriate criteria to use when reviewing an FBOT's clearing organization that is not registered as a DCO.

The Commission notes that the RCCPs consist of recommendations that are expressed as general principles, explanations thereof, and key issues and questions to be considered when assessing observance of the recommendations, rather than a checklist of obligations to be reviewed. The Commission recognizes that the generality of the recommendations and the explanations thereof afford some flexibility in assessing a clearing organization's observance thereto. The Commission anticipates that, for purposes of an FBOT registration application, clearing organizations may demonstrate observance of individual RCCPs, as well as observance of the RCCPs as a whole, in a variety of ways.[42]

CPSS and IOSCO encourage relevant national authorities to assess observance of the RCCPs by the central counterparties in their jurisdictions as well as RCCP assessments by international financial institutions (*i.e.,* the International Monetary Fund and the World Bank) as part of their Financial Sector Assessment Programs. The Commission anticipates that a similar approach will be taken with regard to the FMI Principles. The Commission encourages FBOT registration applicants to submit with their registration applications any such assessments that have been made of their clearing organizations and any other information from their home country regulator(s) (provided that submitting such assessments to the Commission is not inconsistent with any applicable laws of the home country) that would be relevant to a determination that the clearing organization observes the RCCPs. Such assessments will inform the Commission's review of the clearing portion of the application. Due to the generality of the RCCPs, however, the Commission believes that a certification from a regulatory authority that the clearing organization observes the RCCPs, without more, would not provide it with sufficient information as to the relevant clearing operations to adequately assess the FBOT application and, thus, would not be sufficient to demonstrate that the RCCP requirement is met.

With respect to Bursa Derivatives' request that the Commission consider a clearing organization's reasons for non-compliance with certain RCCPs, the Commission generally believes that a registered FBOT's clearing organization should be able to represent that it observes the RCCPs or successor standards. However, the Commission recognizes that a clearing organization may have very unique factual circumstances that may warrant an exception to the requirement with respect to a limited scope of RCCPs. Accordingly, the Commission would, where circumstances warrant, entertain applications from FBOT's whose clearing organizations do not observe all of the RCCPs.

e. Foreign Regulation of FBOT Participants

In the proposed rules, the Commission specifically asked for comment as to whether, to the extent an FBOT is permitted to list swaps, the Commission should examine the regulatory oversight of relevant market participants (*e.g.,* the functional equivalents of swap dealers (SD) and major swap participants (MSP)) in the applicable foreign jurisdictions when making a determination as to the comparability and comprehensiveness of the supervision and regulation of the relevant regulatory regime. Three commenters addressed the issues related to market participants. Better Markets commented that ''[s]uch examination is critical * * * [and must include an assessment of] rules relating to collateral, business conduct and trading behavior.'' It noted that ''SDs and MSPs are subject to rigorous standards because safeguards for these important market participants enhance the continued financial integrity of the marketplace.'' Better Markets further argued that the requirements for the foreign equivalents of SDs and MSPs should be the same as or equivalent to those imposed by the Dodd-Frank Act. In contrast, ICE commented that requiring equivalent or comparable regulation of foreign swap dealers or major swap participants is premature, positing that the proper course is for the CFTC to ''work with foreign regulators to ensure high-level comparable regulation of market participants.'' As previously noted, FOA expressed concern that this type of analysis could easily lead to a ''line by line'' examination of the EU's approach to the regulation of derivatives transactions, central counterparties and trade repositories, which would complicate cross-border business and increase the risk of inadvertent breaches of rules.

The Commission has determined that it would not be appropriate, in the context of this rulemaking, when making a determination as to the comparability and comprehensiveness of the supervision and regulation of the relevant regulatory regime with respect to the registration of an FBOT, to require examination of the regulatory oversight of SDs and MSPs in the applicable home country jurisdictions. CEA section 4(b) applies with respect to FBOTs that wish to provide for direct access and the CEA section 4(b)(1)(A)(i) standard of review to be applied is ''whether any such foreign board of trade is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the foreign board of trade's home country.'' The Commission believes that the review standard is thereby appropriately focused on an FBOT's operations, including its clearing organization, and its regulatory authority. Thus, the appropriate review here is to examine the FBOT's membership and trading participant standards as they relate to trading on the FBOT. If such membership and/or trading participant standards have been determined to be adequate by the FBOT's regulatory authority, which has been determined to provide comparable, comprehensive supervision and regulation of the FBOT, any further participant review would be beyond the scope of CEA section 4(b).

[42] The Commission expects to take a similar approach with respect to the FMI Principles, when finalized. As currently drafted, the FMI Principles will include general principles, key considerations that explain the general principle, and explanatory notes that discuss the objective and rationale behind the principle and that provide guidance on how the standards expressed therein can be implemented. In some cases, annexes will provide additional information and guidance. When published, the document also will be accompanied by an assessment methodology.

3. Contracts

a. Linked Contracts

(i) Definition

Proposed § 48.2(d) defined a linked contract as ''a futures or option or swap contract made available for direct access from the United States by a registered foreign board of trade that settles against any price (including the daily or final settlement price) of one or more contracts listed for trading on a registered entity as defined in section 1a(40) of the Act.'' [43] Three commenters requested clarification with respect to this definition.[44] NGX requested that the Commission clarify the definition of linked contract to take into account the nuanced distinction between (1) contracts which are settled against the settlement price of a contract listed for trading on a U.S. contract market and (2) basis contracts, the prices of which are merely quoted with reference to another market. Better Markets commented that the definition of linked contract is far too narrow, and argued that it should include contracts that are reasonably likely to influence prices of the DCM/SEF-traded contracts as well as contracts that directly reference the prices of DCM/SEF-traded contracts. LME requested clarification on the scope of the definition of linked contract, commenting that LME did not believe the definition captured any contract of the type traded on LME.

The Commission has determined to adopt the definition in § 48.2(d) substantially as proposed. The definition of linked contract leading to the requirement to impose additional conditions on such contracts is based upon the statutory description of linked contracts found in CEA section 4(b)(1)(B).[45] With respect to contracts that do not meet the definition of linked contracts, the proposal provided that applicants must identify contracts that share any other commonality (changed to relationship in the final rule) with a contract listed for trading on a registered entity— for example, if both the FBOT's and the registered entity's contracts settle to the price of the same third party-constructed index. With respect to these types of contracts, as with all conditions of registration, the final rule provides that the Commission, in its discretion and after appropriate notice and opportunity to respond, may impose additional conditions on the registered FBOT. Such additional conditions would be imposed if deemed necessary by the Commission to maintain its ability to carry out its market surveillance responsibilities when faced with contract relationships that essentially create a single market for the contracts listed by the FBOT and the registered entity and could include, among others, the conditions applicable to the listing of a linked contract.

(ii) Conditions

Proposed § 48.8(c) applied certain additional specified conditions for FBOTs that make linked contracts available by direct access. [46] The conditions included in § 48.8(c)(1), as set forth in CEA section 4(b)(1)(B), included: (1) Making public daily trading information regarding the linked contract that is comparable to the daily trading information published for the contract to which it is linked; (2) adopting position limits for the linked contract that are comparable to the position limits adopted by the registered entity for the contract to which it is linked; (3) having the authority to require or direct any market participant to limit, reduce, or liquidate any position; (4) agreeing to promptly notify the Commission of certain changes with respect to the linked contract; (5) providing information to the Commission regarding large trader positions in the linked contract that is comparable to the large trader position information collected by the Commission for the contract to which it is linked; and (6) providing the Commission such information as is necessary to publish reports on aggregate trader positions for the linked contract that are comparable to such reports on aggregate trader positions for the contract to which it is linked.

The other conditions on linked contracts, set forth in § 48.8(c)(2), are based on the second set of additional conditions the Commission imposed on the no-action relief issued to ICE Futures Europe when that exchange made available for trading by direct access certain contracts in energy commodities linked to the prices of contracts traded on NYMEX.[47] The conditions would require that the FBOT, among other things, (1) inform the Commission in a quarterly report of any member that had positions in a linked contract above the applicable FBOT position limit, (2) provide trade execution and audit trail data for input to the CFTC's Trade Surveillance System (TSS), (3) provide for CFTC on-site visits for the purpose of overseeing the FBOT's and the clearing organization's ongoing compliance with registration requirements and conditions, (4) provide, at least one day prior to the effective date, copies of, or hyperlinks to, all rules, rule amendments, circulars and other notices published by the FBOT with respect to all linked contracts, (5) provide copies of all disciplinary notices involving the FBOT's linked contracts, and (6) promptly take similar action with respect to its linked contract in the event that the CFTC, pursuant to its emergency powers authority, directs that the U.S. registered entity which lists the contract to which the FBOT's contract is linked to take emergency action with respect to a linked contract (*e.g.,* to reduce positions in or cease trading in the contract).

Five commenters addressed these additional conditions.[48] With respect to linked contracts and position limits, LME, noting that foreign markets may well implement restrictions that could be more effective than position limits in addressing the regulatory objectives to be addressed by position limits, suggested that FBOTs should be permitted to adopt the position limits of a linked market as a safe harbor, but that the CFTC should also permit applicants to submit for approval any alternative approach that the Commission determines to be comparable in result. OSE argued that the proposed additional conditions for linked contracts are only necessary when an FBOT has more than a *de minimis* amount of trading in a linked contract.

OSE also noted that the burdens associated with proposed § 48.8(c)(2) may be overly costly and could be narrowed. Specifically, OSE commented on proposed § 48.8(c)(2)(ii), which would require that the FBOT provide trade execution and audit trail data on

[43] Registered entity is defined in CEA section 1a(40) to mean: (A) A board of trade designated as a contract market under section 5 of the Act; (B) a derivatives clearing organization registered under section 5b of the Act; (C) a board of trade designated as a contract market under section 5f of the Act; (D) a swap execution facility registered under section 5h of the Act; (E) a swap data repository registered under section 21 of the Act; and (F) with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded.

[44] NGX, Better Markets, and LME.

[45] The Commission does not believe that any LME contract currently made available for direct access under LME's no-action relief, all of which settle against prices generated by the LME, would fall into that definition.

[46] Under the proposed regulations, the requirements to register and to comply with the conditions for making available linked contracts are applicable only to those FBOTs which make such contracts available through direct access. The registration and linked contract provisions of the final rule do not extend to FBOTs that do not provide direct access to the FBOT's trade matching system from the U.S.

[47] *See* CFTC Letter No. 09–37 (August 20, 2009).

[48] LME, OSE, Senator Carl Levin, CMOC and ATA.

a linked contract for input into the TSS on a routine basis by the day following the trade date. OSE suggested that the Commission assess the relative burdens of the requirement and whether it could achieve the regulatory purpose through a more targeted requirement, such as requiring the data on an ''as necessary'' rather than on a daily basis. OSE also expressed concern about proposed § 48.8(c)(2)(vi), which would require the FBOT, in the event that the Commission directs that the registered entity that lists the contract to which the FBOT's contract is linked take emergency action with respect to a linked contract, subject to information-sharing arrangements between the Commission and its regulatory authority, to promptly take similar action with respect to the its linked contract. OSE suggested that it is preferable for the Commission to coordinate the actions that the FBOT should take in response to a market disruption or event through the FBOT's regulator, in recognition of international comity.

Two commenters, Senator Carl Levin and ATA, strongly supported the proposed linked contract conditions, both specifically identifying the requirement that the FBOT share its trade execution and audit trail data, as well as the position limit provisions. Senator Levin commented that sharing trading data is vital for the Commission to detect price manipulation and excessive speculation involving U.S. futures traded on foreign exchanges. Further, Senator Levin noted that he believed the linked contract provisions would help to close the ''London loophole'' (a scheme, whereby, according to Senator Levin, traders move their trading activity to foreign markets to avoid position limits set by U.S. exchanges) by ensuring that the Commission is able to police FBOT trading in U.S. commodities to stop excessive speculation, price manipulation, and market disruptions. CMOC encouraged the CFTC to require that the FBOT impose position limits that are at least equal to or lower than the limits to be imposed in the U.S. on registered entities under the Dodd-Frank Act.

The Commission has determined to adopt § 48.8(c) substantially as proposed. The first set of conditions for linked contracts, found in § 48.8(c)(1) are statutory-based conditions which are specifically required by the CEA section 4(b)(1)(B). The second set of conditions for linked contracts, found in § 48.8(c)(2), as previously noted, represent the second group of additional conditions the Commission imposed on the no-action relief issued to ICE Futures Europe when that exchange made available for trading by direct access contracts linked to the prices of contracts traded on NYMEX. These conditions remain necessary because such linkages create a single market for the subject contracts and, in the absence of certain preventive measures at the FBOT, could compromise the Commission's ability to carry out its market surveillance responsibilities. Because of the linkage, the trading of the linked contracts on an FBOT potentially affects the pricing of contracts traded on registered entities.

With respect to the proposed § 48.8(c)(2)(ii) trade execution and audit trail data on a linked contract reporting requirement, the Commission has considered comments urging the Commission to require the data on an ''as necessary'' rather than on a daily basis and has determined that the timely provision of such information is essential if the Commission is to adequately carry out its trade practice and market surveillance responsibilities with respect to the linked contract listed on the registered entity. Commission staff conducts surveillance and reviews the trading data on a daily basis, and the trade data from the FBOT's linked contract are a critical component of this surveillance. With respect to the proposed § 48.8(c)(2)(vi) coordinated emergency action requirement, the Commission believes that the timeliness of any required emergency action, which would be taken only if necessary to protect the market and the public, is critical and outweighs the benefit that would be derived from coordinating actions through the FBOT's regulator. The Commission notes that the requirement to take emergency action is an extremely rare event and, in the normal course of business, the Commission would, time permitting, coordinate with the FBOT's regulator regarding critical actions to be taken concerning a linked contract.

The Commission has determined to modify the second set of conditions on linked contracts by moving the requirement in proposed § 48.8(c)(2)(iii), which provided for CFTC on-site visits for the purpose of overseeing the FBOT's and the clearing organization's ongoing compliance with registration requirements and conditions, to § 48.8(a)(8), thus making it a general condition for maintaining registration.

b. Swaps and Other Contracts

(i) Swaps

Under proposed § 48.7(c)(1)(i), a registered FBOT would be permitted to provide direct access to futures, options, and swap contracts that would be eligible to be listed for trading on a DCM. Five commenters supported permitting the execution of swaps on an FBOT by persons located in the U.S. by direct access.[49] Eurex, for instance, commented that the Commission should permit FBOTs to provide trading access to qualified U.S. persons for trading swaps that are listed on the FBOT, noting that the currently proposed conditions on FBOTs would be sufficient for them to comply with the purposes of the Dodd-Frank Act regarding swap trading.

The Commission has determined to adopt the rule as proposed. The Commission notes, however, that the regulations would only permit an FBOT to make swaps available to persons located in the U.S. for trading by direct access after the FBOT, its clearing organization, and the swaps to be made available by direct access have been determined by the Commission to be subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the FBOT's home country. Moreover, only swaps that would be permitted to be traded on a DCM could be made available, all such traded swaps would be required to be cleared, and the parties trading such swaps would be required to satisfy FBOT membership/trading participant standards that would have been reviewed and approved by the FBOT's regulatory authority.[50]

Registered FBOTs that permit swaps to be traded by direct access would also be subject to additional conditions, including the requirement to ensure that all swap transaction data, including price and volume, are timely reported as soon as technologically practicable after execution of the swap transaction to a

[49] Eurex, ICE, NGX, MX, and BG.

[50] The Commission notes that its decision to permit registered FBOTs to make swaps available via direct access to persons located in the U.S. is guided in part by the fact that the Dodd-Frank Act permits swaps to be listed for trading on a DCM and the FBOTs that are eligible to be registered are defined by § 48.2(b) as FBOTs that possess the attributes of an established, organized exchange. This definition was intended to restrict FBOT registration eligibility to entities similar in nature to those that received direct access no-action relief in the past (*e.g.,* entities that are comparable in operation and regulation to registered DCMs). Moreover, there is nothing in the Dodd-Frank Act, including section 738 of the Dodd-Frank Act amending section 4(b) of the Act, which expressly precludes a registered FBOT from offering swaps through direct access. However, the Commission also believes that the terms and conditions of any swap contract to be made available to persons located in the United States through direct access must demonstrate that such contract would meet review standards similar to those of a swap to be listed on a DCM and must demonstrate that the contract is not one that a U.S. person would be prohibited from trading.

swap data repository (SDR) that is either registered with the Commission or has an information-sharing arrangement with the Commission. Additionally, the FBOT must agree to coordinate with the Commission with respect to arrangements established to address cross market oversight issues involving swaps trading, including surveillance, emergency actions, and the monitoring of trading. Finally, based on its experience in administering these FBOT registration provisions and other rules related to swaps trading, the Commission may, in its discretion and after notice and an opportunity to respond, impose additional conditions upon the FBOT's registration with respect to the listing of swaps contracts.

(ii) Clearing of Swaps

Under proposed § 48.7(c)(1)(ii), all contracts that could be made available to be traded by direct access, including swaps, would be required to be cleared. ICE, BG Americas, and NGX opposed the mandatory clearing requirement for swaps. ICE commented that the clearing mandate contained in the proposed regulations differed from the clearing requirements applicable to swaps transactions on U.S. markets. Specifically, transactions executed on a swap execution facility (SEF) would not be required to be cleared if such transactions were not subject to the mandatory clearing requirements set forth in the Act. NGX noted that end users executing swaps on SEFs would be exempt from the mandatory clearing requirements pursuant to section 2(h)(7) of the Act. Similarly, BG Americas commented that the mandatory clearing standard applicable to transactions executed on an FBOT would be higher than that applicable to U.S. exchanges, in light of the available exemptions from the clearing requirement in the CEA, and recommended that the Commission clarify in the final rule that the mandatory clearing requirements on FBOTs will be no different from the clearing requirements on U.S. exchanges.

The Commission has determined to adopt § 48.7(c)(1)(ii) as proposed. All three commenters supported their view by referencing the clearing standards applicable to transactions executed on SEFs, not on DCMs. As stated above, both the proposed and final § 48.2(b) restrict the universe of FBOTs that are eligible to be registered under part 48 to those that possess ''the attributes of an established, organized exchange or other trading facility.'' This provision is intended to limit FBOT registration eligibility to the types of entities to which direct access no-action relief has been granted in the past (*e.g.,* entities that are comparable in operation and regulation to registered DCMs). Accordingly, the Commission believes that the treatment of swaps that registered FBOTs will make available for trading to members and other participants located in the U.S. through direct access should parallel the treatment afforded to swaps transactions that may be traded on DCMs.

The CEA requires swaps transactions that are traded on a DCM to be cleared. Specifically, CEA section 5(d)(11) includes DCM Core Principle 11, ''Financial Integrity of Transactions,'' which requires a board of trade to establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into on or through the facilities of the contract market (including the clearing and settlement of transactions with a DCO). Accordingly, the Commission believes that it is appropriate to require that all transactions (including swaps) that are eligible to be traded by direct access pursuant to an FBOT registration be cleared.

(iii) Swaps Data Reporting

Under proposed § 48.8(a)(9)(i), a registered FBOT permitting swaps to be traded by direct access would be required to report to the public, on a real-time basis, data relating to each swap transaction, including price and volume, as soon as technologically practicable after execution of the swap transaction. Under proposed § 48.8(a)(9)(ii), a registered FBOT permitting swaps to be traded by direct access would be required to ensure that all swap transaction data is timely reported to an SDR that is either registered with the Commission or has an information-sharing arrangement with the Commission.

Two commenters addressed these reporting requirements. ATA expressed concern about the effect of real-time reporting on their members' ability to hedge and recommended that this requirement be revised to allow delayed reporting to permit counterparties to close their related transactions. ICE expressed the view that the CFTC should not require all FBOTs to report swaps transactions to an SDR.[51]

The Commission has determined to retain both reporting requirements, but to modify the proposed rule with respect to the responsibility for real-time reporting of swaps transaction information to the public. The Commission recognizes that the real-time reporting of swaps information to the public and the reporting of swaps transactions to an SDR are key objectives of the Dodd-Frank Act. Real-time reporting enhances price discovery. Reporting swaps transactions is necessary to permit the Commission and other regulatory authorities to view the market as a whole. As previously stated, § 48.2 is intended to restrict the universe of FBOTs that are eligible to be registered under part 48 to those entities that are comparable in operation and regulation to registered DCMs. The Commission anticipates that DCMs will be required to ensure that all swap transaction data, including price and volume, are timely reported to an SDR after execution of the swap transaction. Real-time swap transaction and pricing data will then, in turn, be publicly disseminated by the SDR. Accordingly, the Commission has determined to limit the registered FBOT reporting requirements contained in § 48.8(a)(9)(i) to an obligation to ensure that all transaction data relating to each swap transaction, including price and volume, be reported to an SDR that is registered with the Commission or has an information sharing arrangement with the Commission.

The Commission is aware that no SDRs are either registered or operational at this time. Accordingly, until such time as appropriate SDR operations are in place, the conditions contained in Orders of Registration issued to FBOTs that wish to permit members and other participants to trade swaps via direct access will indicate that the FBOT may list such swaps for direct access but will be required to comply with § 48.8(a)(9)(i) as soon as practicable following the licensing or registration of a SDR that meets applicable requirements.

(iv) Contracts Other Than Futures, Options, and Swaps

Proposed § 48.7(c)(1)(i) provided that contracts that may be made available by direct access by a registered FBOT must be futures, option, or swaps contracts. LME and NGX requested clarification with respect to whether the proposed rules would permit an FBOT to offer spot and forward contracts and other similar physically-settled transactions. NGX also asked the Commission to clarify that, although the proposed regulations would permit a registered FBOT to list for trading through direct access any contract that is legally

[51] ICE noted that the SDR rules for domestic markets have not been finalized and SDRs are not yet operational and that, accordingly, the CFTC should delay implementation of this requirement until SDR rules are finalized and SDRs are operational. Further, the CFTC could rely on reporting to the CFTC from the FBOT, its clearing organization, or the foreign regulatory authority under an information-sharing arrangement.

offered in the U.S., only those contracts that are regulated under the Act would be within the scope of the FBOT registration provision.

The Commission has determined to adopt the rule as proposed. As stated in the proposal, those types of contracts subject to the CFTC's jurisdiction are within the ambit of the FBOT registration rules. The registration provisions do not preclude an FBOT from making available to participants located in the U.S. other products (*e.g.,* spot contracts and forward contracts) to the extent applicable law otherwise allows. The Commission also has determined to remove any reference to products from the FBOT definition set forth in § 48.2(a).

(v) Review of Contracts

Proposed § 48.7(c) would require that an FBOT, as part of its application for registration, provide, among other things, the terms and conditions of the futures, option and swaps contracts intended to be made available for direct access. Additionally, proposed § 48.10 would require a registered FBOT that wishes to offer new contracts subsequent to registration to submit such contracts to the CFTC for review prior to making the additional contracts available for trading by direct access. LME commented that the Commission should adopt an exemptive, rather than a registration, regime and require contract designation, similar to that applied by the Commission when a DCM submits a new contract for listing, only with respect to linked contracts.

The Commission has determined to adopt §§ 48.7(c) and 48.10 as proposed, modified to reflect newly adopted procedures, discussed below, applicable to the offer or sale, to persons in the U.S., of non-narrow-based security index futures and option contracts. The Commission believes that it is necessary to review the terms and specifications of all contracts before they are made available for trading by direct access to ensure that the contracts would be legally permitted to be traded on a DCM and otherwise conform to the requirements and conditions applicable to contracts listed on the FBOT for trading by direct access by persons located in the U.S. The Commission also believes that it is necessary and appropriate to review new contracts in order to, among other things, determine that the contracts are actually futures, option, or swap contracts; ensure that they are not contracts determined by the Commission pursuant to CEA section 5c(c)(5)(C)(i) to be contrary to the public interest; ensure that they are not contracts on such products as security futures or narrow-based stock indexes or other securities regulated by the U.S. Securities and Exchange Commission; and determine whether the contract is linked to or may otherwise have some impact on a contract traded on a CFTC-regulated entity. The Commission notes that the treatment of new products set forth in the proposed and final rules is consistent with the existing practice under the no-action regime. The Commission further notes that, in the past, Commission staff has attempted to complete its review of additional contracts proposed to be made available for direct access promptly. Thus, an FBOT's ability to bring such contracts to market quickly generally has not been impaired.

With respect to the listing of additional non-narrow-based security index futures and option contracts to be made available by direct access, proposed § 48.10 provided that a registered FBOT could list for trading such an additional futures contract pursuant to the procedures set forth in Appendix D to Part 30. Proposed § 48.10 also provided that a registered FBOT could, without further action by either the FBOT or the Commission, list for trading an additional option contract on a non-narrow-based security index futures contract which could be offered or sold in the United States pursuant to a no-action letter issued by the Commission's Office of the General Counsel. HKFE requested clarification with respect to any interrelationship between the proposed rules and the approval process for the offer and sale of index products to persons in the U.S.

The Commission has revised its procedures applicable to the offer or sale, to persons in the U.S., of a non-narrow-based security index futures contract traded on an FBOT to conform to recent amendments to its regulations.[52] Generally, the new procedures involve the issuance of a Commission certification rather than a no-action letter. Accordingly, § 48.7(c)(2) has been added and provides that foreign futures (and option contracts) on non-narrow-based security indexes must have been certified by the Commission pursuant to the procedures set forth in § 30.13, and § 48.10 has been updated and now provides that a registered FBOT may list for trading by direct access an additional futures (or option contract) on a non-narrow-based security index pursuant to the Commission certification procedures set forth in § 30.13(d) and Appendix D to Part 30. Further, with respect to option contracts, if the option is on a non-narrow-based security index futures contract which may be offered or sold in the United States pursuant to a Commission certification issued pursuant to § 30.13, the option contract may be listed for trading by direct access without further action by either the registered FBOT or the Commission.[53] In response to HKFE's query, the Commission notes that the Commission certification procedures for non-narrow-based security indexes and the FBOT registration procedures are independent of each other, with the exception that a registered FBOT applying for Commission certification to offer or sell to persons located within the U.S. a non-narrow-based security index contract may, in that same request, pursuant to § 30.13(k), request that such contract be made available for trading by direct access.

4. Direct Access Definition

Proposed § 48.2(c) defines direct access to mean ''an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade,'' which is identical to the definition provided in CEA section 4(b)(1)(A). LME and HKFE requested clarification of the definition.

LME requested clarification of the degree to which the definition covers access to application programming interfaces (API) developed by members to interface with exchange systems. LME indicated that it understood the direct access definition to include access to the graphical user interface of an FBOT, and not indirect access via an API. HKFE asked the Commission to clarify the meaning of ''explicit grant of authority'' and to provide examples of the kind of conduct or actions on the part of an FBOT that would be regarded

[52] *See Foreign Futures and Options Contracts on a Non-Narrow-Based Security Index; Commission Certification Procedures,* 76 FR 59241 (September 26, 2011).

[53] Upon the implementation date, regulations 48.7(c) and 48.10 supersede and replace the provisions included in the ''Notice of Revision of Commission Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade That Have Received Staff No-Action Relief to Provide Direct Access to Their Automated Trading Systems from Locations in the United States'' (71 FR 19877; April 18, 2006; corrected at 71 FR 21003, April 24, 2006) and the ''Notice of Additional Conditions on the No-Action Relief When Foreign Boards of Trade That Have Received Staff No-Action Relief To Permit Direct Access to Their Automated Trading Systems from Locations in the United States List for Trading from the U.S. Linked Futures and Option Contracts and a Revision of Commission Policy Regarding the Listing of Certain New Option Contracts,'' 74 FR 3570 (January 21, 2009).

as ''an explicit grant of authority.'' HKFE also requested that the CFTC clarify the position taken previously in connection with the granting of a direct access no-action letter that an automatic order routing connection from the U.S. to an FBOT would not be considered as ''direct access.'' Similarly, in relation to proposed § 48.8(a)(4), which addresses restrictions on direct access, ASX requested that the placement of terminals in non-exchange participant offices, and the conditions thereof, be specified in the new rules.

The Commission has determined to adopt the rule as proposed. Direct access is defined in the CEA and in the proposed and final regulations to mean 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 trade matching system of the foreign board of trade. This means that the FBOT itself, and not its members or participants, has identified and permitted a member or participant to enter trades directly into the FBOT's order matching and trade entry system from the U.S. The electronic means of entry to the trading system may be through the internet, a dedicated closed electronic system, an API, or other type of electronic interface—the dispositive factor is that the order is transmitted by an identified member or other participant located in the U.S. and the order is entered directly into the trade matching system. Thus, it does not constitute direct access if the order is sent by a person in the U.S. by means of an automated order routing system (AORS) to an intermediary located outside of the U.S. for further action or to pass through an order entry or risk management filter at the intermediary prior to reaching the trade matching engine.

Proposed § 48.8(a)(4), which addresses restrictions on direct access, requires that the FBOT not provide, and take reasonable steps to prevent, third parties from providing direct access to the FBOT. This provision is intended to restrict direct access to FBOT-authorized persons by such methods as restricted access to hardware, password control, and other similar physical or electronic security measures. It is not intended to prohibit a registered FBOT from authorizing its member firms or other participants eligible to handle U.S. customer orders to permit their customers in the U.S. to access the trading system using the member firm's or participant's member ID (mnemonic) or password. In other words, a registered FBOT's member or participant located outside of the U.S. may, if so authorized by the FBOT, permit customers in the U.S. to transmit orders directly to the trade matching engine. The Commission is aware that two FBOTs currently operating with direct access no-action relief—ASX [54] and HKFE [55]—permit their exchange participants to allow non-exchange participants in the U.S. to have access to the exchanges' trading systems, subject to a guarantee from an exchange participant firm.

5. Scope of Registration (*i.e.,* CEA Sections 5 and 5a)

HKFE commented that there is no express provision in the proposed rules stating that registration under Part 48 would relieve an FBOT from compliance with CEA section 5 or 5a (that is, registering as either a DCM or DTEF). HKFE asked for clarification as to whether registration would relieve an FBOT from compliance with CEA section 5 or 5a.

The Commission has determined to adopt the rule as proposed. Registration with the Commission under the Part 48 regulations would relieve an FBOT from compliance with CEA section 5 and its requirement to register with the Commission as a DCM and comply with the core principles and regulations associated with DCMs to the extent that its activity within the U.S. is limited to permitting members and other participants located in the U.S. to have direct access to its trade matching system, subject to the terms and conditions of registration, and so long as it remains an FBOT. Of course, the registered FBOT could, alternatively, choose to comply with CEA section 5 and become a registered DCM, subject to the regulatory requirements applicable thereto. The Commission notes that CEA section 5a was repealed by the Dodd-Frank Act.

6. Registration Requirements and Conditions

Proposed § 48.7 identified certain requirements that must be satisfied by an FBOT seeking to register with the Commission. Proposed § 48.8 imposed various continuing conditions on registered FBOTs. Several commenters raised issues related to the proposed requirements and conditions.

a. Trading Rules

Proposed § 48.7(b) identified the attributes of the automated trading system that would be required to be met by any FBOT seeking to register with the Commission. In response to the proposal's request for comment with respect to whether the Commission should require FBOTs to adopt additional conditions to promote orderly markets and customer protection, such as automated safety features to protect against errors in the entry of orders, price-banding mechanisms, maximum order size limitations, or trading pauses to prevent cascading stop-loss orders, ICE commented that the Commission should not issue prescriptive trading rules for FBOTs and that the foreign regulator, not the CFTC, has the primary interest in adopting rules in this area. Further, ICE noted that the CFTC should work through international regulatory groups like IOSCO to implement consistent controls, instead of prescriptive rules.

The Commission has determined not to require, as a requirement for, or a condition of, registration, that FBOTs adopt such automated safety features. The Commission believes that the primary interest in adopting rules in this area remains with the foreign regulatory authority. The Commission believes that the trading system attributes described in and required by § 48.7(b), which include compliance with the IOSCO Principles for Screen-Based Trading, are adequate to ensure the FBOT's trading system, among other things, is fair, reliable, capable of responding to emergencies, provides an adequate audit trail, and provides for reporting of trade data. They are features common to all automated trading systems that staff has reviewed in the context of the no-action process.

b. Information Sharing

Proposed § 48.8(a)(6) imposed certain information sharing obligations on a registered FBOT and its clearing organization. NYX asserted that the CFTC should not seek to obtain information directly from a clearing organization. Rather, the CFTC should look to the exchange—which should always be able to provide all the information held by the clearing organization in relation to business conducted on that exchange. NYX also commented that some European clearing organizations have the status of banks (*e.g.,* LCH Clearnet SA), and so may find it difficult to share information directly with the Commission rather than through their regulators.

The Commission continues to believe that it would be appropriate and expedient to obtain information regarding the clearing function directly from the clearing organization, in lieu of relying upon intermediation by another entity. Nonetheless, with respect to the FBOT being better able to provide

[54] CFTC Letters No. 01–75 (July 30, 2001) and No. 04–32 (October 25, 2004).

[55] CFTC Letter No. 01–74 (July 30, 2001).

information requested of the clearing organization, the Commission notes that § 48.8(a)(6)(iii) provides that the FBOT and its clearing organization, as applicable, will provide information for certain purposes directly to the Commission. Accordingly, an FBOT could provide the information directly to the Commission, if it were better able to do so. Such information also could be provided by the applicable regulatory authority, although the FBOT and its clearing organization remain ultimately responsible to provide the information directly to the Commission under the final rule.

c. Submission of U.S.-Domiciled Entities to Service of Process

As a condition of registration, proposed § 48.8(a)(5) would require that certain members or other participants granted direct access by a registered FBOT (1) file a written representation with the Commission submitting to the CFTC's jurisdiction, (2) file a valid and binding appointment with the FBOT of an agent for service of process in the U.S., and (3) maintain a written representation with the FBOT that it will provide the Commission and other U.S. authorities with access to books and records and to the premises where the FBOT's trading system is made available in the U.S. LME questioned the need to require U.S.-based persons with direct access to foreign markets (FBOTs) that trade from the U.S. to comply with these three conditions. LME argued that in terms of personal jurisdiction, a U.S.-based person with direct access to an FBOT raises no more jurisdictional issues than a U.S.-based person trading on a U.S. market, as long as both traders are conducting their trading from the U.S.

Upon further review and consideration of the comments received, the Commission has determined that § 48.8(a)(5)(iii), which obligated a registered FBOT to require that each current and prospective member or other participant that is granted direct access pursuant to the FBOT's registration and that is not registered with the Commission as a FCM, a CTA or a CPO file with the FBOT a valid and binding appointment of a U.S. agent for service of process in the U.S., is not necessary. Accordingly, that section has been deleted from the final rule. However, the Commission has determined that the remaining two conditions applicable to members and participants should be adopted as proposed. The Commission believes these conditions remain necessary to ensure that the FBOT members and other participants that have been granted direct access to an FBOT's trading system knowingly consent to submit to the CFTC's jurisdiction and to provide the Commission and other appropriate U.S. authorities with access to relevant books, records and trading premises in the U.S.

7. Modification of Registration Requirements

Proposed § 48.5(e) provided that the Commission may, after appropriate notice and an opportunity for hearing, amend, suspend, terminate or otherwise restrict the terms of an Order of Registration. ASX noted that the proposed rules refer to the ability to modify relief, and asked whether the Commission would provide any clarity with respect to applying for modification and the criteria for modification.

The Commission believes it is not necessary to promulgate a specific procedure for applying for modification of FBOT registration requirements or to delineate the circumstances under which modification might be granted. While the Commission would consider a request for modification of specified registration requirements or conditions if such request is supported by adequate justification and appropriate documentation, the Commission does not anticipate that modifications would be granted unless particularly unique factual circumstances are presented. Given that such requests would involve a unique set of facts and circumstances, the Commission believes that a case-by-case approach is appropriate and thus, is adopting § 48.5(e) substantially as proposed, except that the rule now provides for appropriate notice and an opportunity to respond.

8. Other Concerns

a. Prescriptive Nature of the Regulations

Three commenters voiced concern regarding the risk of protectionism by foreign regulators that might arise in the event that the Commission adopts overly prescriptive registration regulations for FBOTs.[56] FOA noted that the standards set in the U.S. for recognition of foreign regulators would impact, for example, the European approach to the recognition of U.S. market infrastructures. CME Group expressed concern that the proposed rules were overly prescriptive and noted that the Commission should be cognizant of the ''realistic possibility'' that enacting the proposed rules might encourage foreign regulators to adopt a reactive regulatory stance toward U.S.-based exchanges. HKFE asserted that the adoption of the proposed rules would be a departure from the CFTC's long-standing policy of mutual recognition and comity and that this could lead to the diminution rather than the expansion of global connectivity.

The Commission has determined to adopt the rule as proposed. The Commission believes that its final regulations properly standardize the process by which FBOTs are permitted to provide direct access to U.S.-located persons, enhance the transparency of that process, ensure consistency and fairness to all applicants for registration, provide greater legal certainty to registered FBOTs, and are more consistent with the manner in which other countries permit U.S. DCMs to provide direct access to their trading systems from within their borders. As previously noted, the Commission believes that the registration requirements in the final rule represent a principles-based approach to limited oversight and are not overly prescriptive. FBOTs will be required to demonstrate, in a manner consistent with the part 48 regulations, that they operate under supervision and regulation that is comparable to that provided by the Commission's regulatory regime for DCMs, but will not be required to comply with the core principles applicable to DCMs under the CEA and the Commission's regulations.

b. Alternative Trading Platforms

HKFE questioned whether the proposal's definition of FBOT would cover alternative trading platforms such as non-U.S.-based dark pools. Further, HKFE questioned whether, if the intention of the proposed rules is to not cover non-U.S. based dark pools or is designed with such threshold requirements as to effectively affect only traditional exchanges in overseas jurisdictions (as not all FBOTs (as defined) are eligible for registration under the proposed rules), an uneven playing field may be created in favor of these dark pools if access to them is available from the U.S.[57]

The Commission has determined to adopt the rule as proposed. The proposal generally limited the markets eligible for FBOT registration to bona fide exchanges that satisfy the eligibility standards set forth in § 48.2(b). The Commission expects that such exchanges might include, for example,

[56] HKFE, FOA, and CME Group.

[57] The definition of ''board of trade'' as set forth in CEA section 1a(2) refers to ''any organized exchange or other trading facility.'' As such, the statutory definition of ''board of trade'' does not preclude the possibility of alternative trading platforms being covered by the FBOT registration scheme.

exchanges recognized in the EU as Regulated Markets, in the UK as Recognized Investment Exchanges (RIE), or in Japan as Licensed Financial Instruments Exchanges. Of course, even if deemed a ''foreign board of trade eligible to be registered'' under § 48.2(b), the FBOT would still have to satisfy all of the requirements and conditions for registration set forth in the regulations. Foreign SEFs and similar entities likely would not be eligible for FBOT registration unless they could demonstrate they are operated and regulated in a manner that is comparable and comprehensive to the manner in which DCMs (not U.S. SEFs), are regulated by the Commission. The FBOT registration rule should not create an uneven playing field in favor of dark pools since such pools are not likely to qualify for registration and, thus, could not provide for direct access under the FBOT registration rules.

c. Impact of FBOT Registration Rules

ICE suggested that the CFTC should consider the impact of its registration scheme against the broader impact of the Dodd-Frank Act and similar financial reform measures taken by other countries. The Commission has determined to adopt the rule as proposed. The proposed FBOT rules were considered against the international implications of the Dodd-Frank Act and similar financial reform measures being taken by other countries. Relevant financial reform measures taken by other countries will be reviewed as part of the examination of the FBOT's application for registration and, to the extent that such relevant reform measures support regulatory objectives that are consistent with those supported by the CFTC, will be favorably considered. The Commission notes that the historical process of examining whether the FBOT is subject to comparable and comprehensive regulation in its home country has been, and will continue to be, the proper approach to maintaining this balance between reliance upon a foreign regulatory regime and ensuring that an FBOT whose trading and order matching system can be accessed by U.S. customers provides adequate protections.

9. On-Going Review of Registered FBOTs

Three commenters indicated that under their interpretation of the NPRM, the Commission would conduct on-going surveillance and examination of FBOTs and their clearing organizations.[58] For example, Better Markets expressed the view that it is important to continuously monitor both the structure of the foreign regulatory regime to which an FBOT is subject and the quality of the administration of that structure and that FBOTs should be required to annually re-affirm and demonstrate the appropriateness of their foreign regulatory regimes, based upon the standards relevant to their initial application for registration.

As previously discussed, CME Group suggested that the Commission's analysis of the FBOT and its regulatory regime should be more narrowly tailored and that the Commission should limit its inquiry to questions regarding the comparability of the regulatory regime in the FBOT's home jurisdiction. If this approach were adopted, CME Group indicated that it would expect that the Commission would continue to vigorously monitor compliance with the core regulatory principles and ensure that the process is not being abused to avoid legitimate CFTC regulation.

Senator Levin similarly commented that, to ensure market integrity, the Commission must effectively police U.S.-based trading in FBOTs and incorporate that activity into its regular surveillance and enforcement efforts. He also noted that the proposed rules would need a robust program of FBOT supervision, as well as surveillance and examination programs that include an integrated review of the FBOT's U.S. trading activity, asserting that the Commission also would need to bring enforcement cases against individuals who engage in manipulative or abusive trading practices that affect U.S. futures and cash markets and market users and attempt to avoid detection by trading in foreign markets in order to deter such activity.

The Commission has determined to adopt the rule as proposed. As previously discussed, FBOTs will be required, prior to being registered, to submit information and documentation demonstrating that they are subject to comprehensive supervision and regulation by the appropriate governmental authorities in their home country that is comparable to the comprehensive supervision and regulation to which DCMs are subject in the U.S. While the regulations require the FBOT and its regulatory authority to provide critical information on an ongoing basis to the Commission, any on-going review of the FBOT and its clearing organization by the Commission generally will be limited to reviewing the required information and documentation that the FBOT must submit periodically to the CFTC and will not include direct surveillance of trading activity. Staff may conduct periodic on-site visits to validate information submitted as part of the registration application and/or required to be submitted as a condition of registration. Staff will, however, conduct additional review with respect to linked contracts, and will monitor these contracts pursuant to the additional conditions levied upon the FBOT for listing such contracts, *e.g.,* large trader and TSS reporting and comparable position limits. The Commission believes that these provisions are adequate to monitor the activities of the FBOT conducted pursuant to an Order of Registration.

10. The Appendix

For purposes of enhanced clarity and standardization, the Commission has elected to revise the proposed Appendix to Part 48 to include the submission requirements identified therein in the proposal in a standardized application form, Form FBOT and Supplement S–1 (for the clearing organization) to Form FBOT. The Commission believes that the use of this form will make it easier to guide applicants in the organization and presentation of information and documentation and to ensure that all required information is included in the application. Use of the form also will improve the staff's ability to organize and review the information in a timely manner.

III. Conclusion and Effective Date

A. Conclusion

For the reasons stated above and in the NPRM and after considering the complete record in this matter, including all comments, the Commission is adopting part 48 substantially as proposed, subject to the revisions to the proposed rules identified above in response to comments submitted or otherwise initiated by the Commission. This new part 48 provides the rules and procedures to be followed by FBOTs that wish to register in order to provide identified members and other participants that are located in the U.S. with direct access to the FBOT's order entry and trade matching system. Part 48 replaces the practice, used since 1996, of issuing staff direct access no-action relief letters to permit FBOTs to provide their members and other participants located in the U.S. with direct access to their trading systems and provides a transitional period for

[58] Better Markets, CME Group, and Senator Levin.

those FBOTs that have received staff no-action relief.

B. Effective Date

This rule shall become 60 days after publication in the **Federal Register**.

IV. Related Matters

A. The Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)[59] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The final Part 48 rules impose new collection of information requirements within the meaning of the PRA. Accordingly, the Commission requested, but the Office of Management and Budget (OMB) has not yet assigned a control number for the new collection of information. However, OMB has assigned the reference number 201011–3038–003 in the interim. The Commission has submitted this final rule along with supporting documentation for OMB's review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The information collection burdens in the final rules are identical to the collection burdens estimated by the Commission in the proposing release, subject to the modifications discussed below.[60]

The Commission protects proprietary information according to the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

The Commission invited the public and other Federal agencies to comment on any aspect of the information collection requirements discussed in the NPRM. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicited comments in order to: (i) Evaluate whether the proposed collections of information were necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimates of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

In response to the Commission's request in the NPRM for comments on any potential paperwork burden associated with the final rules, two commenters provided substantive comments addressing the merits of the Commission's proposed PRA calculations with respect to § 48.6 and the ''limited'' application. DME argued that limited applications by FBOTs operating under no-action relief could easily take 200 to 300 hours to complete rather than the Commission's proposed estimate of 50 hours. Similarly, HKFE contended that the work involved in submitting a limited application under the proposed regime would be substantially more than the 50 hours estimated by the Commission.

The Commission estimated in the NPRM that a total of 20 FBOTs would file a registration application with the Commission pursuant to the limited application procedures in § 48.6. The Commission notes that the final rules governing the limited application differentiate between those FBOTs whose original no-action relief request was submitted electronically and remains on file with Commission staff and those FBOTs whose original no-action relief request was not submitted electronically to the Commission. The Commission estimates that ten FBOTs would be able to take advantage of the streamlined application procedures in final § 48.6. Indeed, the ten FBOTs would be permitted to simply refer to each portion of their original submissions that satisfies a particular registration requirement, identify the specific registration requirement that is fulfilled by that section, and certify that the information or documentation originally provided remains current and true. After considering the comments from DME and HKFE, in conjunction with the streamlined application requirements adopted by the Commission in the final rules, the Commission has determined that it is not amending its estimate of 50 burden hours for the FBOTs whose original no-action relief request was submitted electronically. However, with respect to the ten FBOTs that would need to submit the complete limited application because Commission staff does not have the original no-action relief request on file in an electronic format, the Commission finds some merit in the comments from DME and HKFE and the Commission is revising its estimates accordingly. Specifically, the Commission estimates that the effect of the final rules on these FBOTs will be to increase the information collection burden by approximately 200 hours, and result in approximately 250 hours per FBOT. Consequently, it is anticipated that ten FBOTs will incur an aggregate of 2,500 burden hours compared to the 500 burden hours estimated in the NPRM for such FBOTs.

The Commission is also revising its information burden collection estimate for FBOTs with pending requests for direct access no-action relief. In the NPRM, the Commission estimated that seven FBOTs, including one new FBOT and six FBOTs that currently have pending requests for no-action relief, would submit a full FBOT registration application. The Commission estimated that the seven FBOTs would expend 1,000 burden hours per FBOT to satisfy the registration requirement. However, the Commission has determined to amend its proposal to substantially reduce the information collection requirements for the six FBOTs with pending requests for no-action relief. Specifically, the final rules provide that an FBOT with a pending no-action request as of the effective date of the rule could, as part of its application for registration, identify information or documents provided in its original no-action submission that would satisfy particular registration requirements. In light of the amendments to the Commission's final rules, the Commission is revising its previous estimate by reducing the information collection burden for the six FBOTs from 1,000 burden hours to 250 hours for each FBOT. Thus, it is anticipated that the six FBOTs will incur an aggregate reduction of 4,500 burden hours than what was stated in the NPRM.

Finally, the Commission estimated in the NPRM that four registered FBOTs would permit swaps to be traded by direct access. Proposed § 48.8(a)(8)(i) required a registered FBOT to report to the public, on a real-time basis, data relating to each swap transaction, including price and volume, as soon as technologically practicable after execution of the swap transaction. In the final rules, the Commission is eliminating the real-time reporting

[59] 44 U.S.C. 3501 *et seq.*

[60] *See* the Commission's Paperwork Reduction Act analysis at 75 FR 70984–86 (Nov. 19, 2010).

requirement for FBOTs because that requirement is being placed on swap data repositories. The Commission previously estimated that each of the four FBOTs would incur an annual reporting burden of 2,080 hours to comply with the real-time reporting requirement. Therefore, the Commission has determined that this rule modification will result in an aggregate reduction of 8,320 burden hours.

Accordingly, the Commission has submitted to the OMB an amended calculation of the annual burden hours for FBOTs.

B. Cost Benefit Considerations

Section 15(a) of the CEA requires the Commission to ''consider the costs and benefits'' of its actions in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.[61] The Commission may, in its discretion, give greater weight to any one of the five enumerated areas and may determine that, notwithstanding costs, a particular rule protects the public interest.

1. Background

(a) Description of the Statutory Registration Authority per the Dodd-Frank Act

Section 738 of the Dodd-Frank Act amended CEA section 4(b) to provide that the Commission may adopt rules and regulations requiring FBOTs that wish to provide their members or other participants located in the United States with direct access to register with the Commission.[62] Section 738 also authorizes the Commission to promulgate rules and regulations prescribing procedures and requirements applicable to the registration of such FBOTs. Accordingly, on November 19, 2010, the Commission published a notice of proposed rulemaking that set forth proposed regulations that would establish a registration requirement and related registration procedures and conditions applicable to FBOTs that wish 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 (NPRM).[63]

(b) Prior No-Action Regime

Since 1996, FBOT requests to provide members and other participants with direct access to their electronic trading and order matching systems from within the U.S. have been addressed by Commission staff pursuant to the no-action process set forth in Commission regulation 140.99.[64] Specifically, such FBOTs have requested, and, where appropriate, received from the relevant Commission division, a no-action letter. As part of the no-action letter, division staff would represent that the division will not recommend that the Commission institute enforcement action against the FBOT for failure to register as a DCM or DTEF if the FBOT provides direct access to members and participants located in the U.S, provided the FBOT satisfies the conditions set forth therein. A no-action request from an FBOT was required to include representations and supporting documentation from the FBOT regarding, among other things, its organization, presence in the U.S., participants, the products it wishes to list for direct access, its trading system and the regulatory regime and information-sharing arrangements to which the FBOT is subject. As noted above, since 1996, Commission staff has issued 24 direct access no-action relief letters to FBOTs, 20 of which remain active.[65] A detailed discussion of the history and evolution of the FBOT no-action process and the scope of the relief provided can be found in the NPRM.[66]

(c) Replacing No-Action Regime With Registration Requirement

(i) Overview. As described in detail in the preamble, the registration regime established in new part 48 will replace the direct access no-action relief process. That registration regime is being established pursuant to the Commission's authority found in section 4(b) of the CEA, as amended by section 738 of the Dodd-Frank Act, as described above. Based on the nature of the directives in CEA section 4(b), this final rulemaking contains certain statutorily mandated components as well as other discretionary components.

(ii) Mandatory components of statute. The adoption of a registration regime applicable to FBOTs that desire to provide their members or other participants located in the U.S. with direct access to their trading systems is discretionary. However, if the Commission determines to adopt such a registration regime, certain non-discretionary guidelines are mandated in the statute. Specifically, CEA section 4(b)(1)(A) provides that:

> In adopting such rules and regulations, the Commission shall consider—
>
> (i) Whether any such foreign board of trade is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the foreign board of trade's home country; and
>
> (ii) Any previous commission findings that the foreign board of trade is subject to comparable comprehensive supervision and regulation by the appropriate government authorities in the foreign board of trade's home country.

Because the Commission is promulgating an FBOT registration scheme, the Commission is required to incorporate these two guidelines in issuing the final rules. In accordance with these two guidelines, part 48 includes certain requirements, procedures, and conditions for FBOT registration. While there are some costs inherent in a FBOT registration scheme that follows the scope of review mandated by Congress, the Commission considers the costs and benefits associated with implementing the discretionary components of this FBOT registration scheme below.

Several provisions applicable to a linked contract are mandatory regardless of whether the Commission adopts FBOT registration rules.[67] Specifically, CEA section 4(b)(1)(B), as amended by the Dodd-Frank Act, mandates that the Commission may not permit an FBOT to make a linked contract available via direct access absent several statutorily specified conditions. These conditions, set forth

[61] 7 U.S.C. 19(a).

[62] Direct access is defined in section 4(b) of the CEA, as amended by section 738 of the Dodd-Frank Act, to refer to 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.

[63] *See Registration of Foreign Boards of Trade,* 75 FR 70974 (Nov. 19, 2010).

[64] *See, e.g.,* CFTC Letter No. 96–28 (Feb. 29, 1996). Commission regulation 140.99 defines the term ''no-action letter'' as a written statement issued by the staff of a Division of the Commission or of the Office of the General Counsel that it will not recommend enforcement action to the Commission for failure to comply with a specific provision of the Act or of a Commission rule, regulation or order if a proposed transaction is completed or a proposed activity is conducted by the beneficiary.

[65] One no-action relief letter was superseded and three were revoked when the FBOTs ceased operations as regulated or recognized markets. Currently, 14 of the FBOTs with active no-action relief report volume originating from the U.S. via direct access.

[66] 75 FR 70974–76.

[67] Based upon the statutory provision regarding linked contracts in CEA section 4(b)(1)(B), § 48.2(d) defines a linked contract as a futures, option or swap contract that is made available for trading by direct access by a registered FBOT that settles against any price (including the daily or final settlement price) of one or more contracts listed for trading on a registered entity as defined in section 1a(40) of the Act.

in § 48.8(c)(1), address (1) making public daily trading information regarding the linked contract that is comparable to the daily trading information published for the contract to which it is linked; (2) adopting position limits for the linked contract that are comparable to the position limits adopted by the registered entity for the contract to which it is linked; (3) having the authority to require or direct any market participant to limit, reduce, or liquidate any position; (4) agreeing to promptly notify the Commission of certain changes with respect to the linked contract; (5) providing information to the Commission regarding large trader positions in the linked contract that is comparable to the large trader position information collected by the Commission for the contract to which it is linked; and (6) providing the Commission such information as is necessary to publish reports on aggregate trader positions for the linked contract that are comparable to such reports on aggregate trader positions for the contract to which it is linked.

Congress mandated these linked-contract conditions on FBOTs. To the extent that these new rules reflect the statutory provisions of the Dodd-Frank Act, such rules will not create costs and benefits in addition to the costs and benefits that already will result from the action of Congress in passing the Dodd-Frank Act. However, such rules may generate costs and benefits that are attributable to the determinations made by the Commission regarding the manner in which statutory provisions in the Dodd-Frank Act should be implemented. The costs and benefits of these Commission determinations are considered in light of the five factors set forth in CEA section 15(a).

(d) Purpose of the Final Rules

As described in the preamble, the purpose of these final rules is to formalize and standardize the process by which an FBOT may provide traders located in the U.S. with direct access to its trading system. By implementing uniform application procedures and registration requirements and conditions, the process 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.

In determining to adopt formal registration rules for FBOTs, the Commission has considered that the no-action process is generally better suited for discrete, unique factual circumstances and for situations where neither the CEA nor the Commission's regulations directly address the issue presented. The Commission has determined that, where the same type of relief is being granted on a regular and recurring basis, as it has been with respect to permitting FBOTs to provide direct access to their trading systems to specified members and other participants that are located in the U.S., it is no longer appropriate to handle requests for the relief through the no-action process. Rather, such matters should be addressed in generally applicable regulations. The Commission also notes that a statutory-based regulatory FBOT registration regime will be more consistent with the statutory-based framework under which other countries, including the UK, Australia, Singapore, Japan and Germany, among others, permit DCMs to provide direct access internationally.

(e) Public Comment

As described in detail in the preamble, the Commission, in preparing these final rules, sought and incorporated comment from the public. In the NPRM, the Commission specifically requested comment on the cost benefit section and invited commenters to provide data quantifying the costs and benefits of the proposed regulations. The Commission received 14 comments discussing the costs and benefits of the proposed rules, but none that provided quantitative data. These comments included 10 letters from entities representing thirteen FBOTs operating under existing no-action relief,[68] one letter from another exchange,[69] and one letter each from FOA, CME Group, and ESMA. Those comments are specifically addressed in the context of the extended cost benefit consideration discussion below.

2. Summary of the Final Rules

As described in detail in section III of the preamble, new part 48 provides the procedures, requirements, and conditions to be met by FBOTs that seek to provide their members and other participants in the U.S. with direct access to the FBOT's order entry and trade matching system. The final rules set forth, among other things, procedures an FBOT must follow in applying for registration, requirements that an FBOT must meet in order to obtain registration, conditions that an FBOT must satisfy on a continuing basis upon obtaining registration, and provisions for the termination of registration.

Specifically, § 48.1 sets forth the scope of the rules and § 48.2 provides definitions applicable to the registration provisions. Section 48.3 makes it clear that registration is required if an FBOT wishes to provide for direct access. Section 48.4 establishes registration eligibility and identifies the entities to which an FBOT can permit direct access once it is registered. Pursuant to § 48.5, FBOTs wishing to provide direct access to their trading systems to members and other participants located in the U.S. will be required to file an application for registration with the Commission that contains all of the information and documentation necessary to successfully demonstrate that the FBOT satisfies the registration requirements contained in § 48.7. In addition, § 48.5 describes the procedures for applying for registration, notices the applicant that the Commission will be considering the two statutorily-mandated guidelines, among other things, in its review of the application, and describes the Commission response following approval or disapproval of the application. Section 48.6 provides a limited application procedure for FBOTs currently operating under existing no-action relief and FBOTs that have submitted a complete application for no-action relief that is pending as of the effective date of this regulation. Section 48.7, previously mentioned, includes the requirements that must be met before an FBOT can be registered. Once registered, all FBOTs will have to maintain continuing compliance with the conditions listed in § 48.8 of the final rules, including the statutorily-mandated conditions on linked contracts. Section 48.9 provides the rules for the revocation of registration. Finally, § 48.10 establishes the process for an FBOT to make additional contracts available for direct access following an initial registration.

3. Factors Affecting the Scope of the Final Rules

The costs that the rules impose on FBOTs seeking registration will vary depending on various factors including the size of the FBOT and whether the FBOT's clearing organization is a DCO. Larger FBOTs are more likely to have the means to hire U.S. counsel or sufficient staff expertise to submit a complete registration application in an

[68] DME, LME, MX, ICE (owner of ICE Futures Europe and ICE Futures Canada), HKFE, BM&F, OMX, NYX (operator of Liffe, Euronext Paris SA, and Euronext Amsterdam N.V.), Eurex, and OSE.

[69] NGX.

efficient manner than smaller FBOTs. It may be less costly to demonstrate that a clearing organization is a DCO than that it complies with the RCCPs. Another factor that could affect costs is demonstrating the comparability of the supervision by the FBOT's home regulator, since regulatory structures in different countries vary. Moreover, the cost of filing a limited application for FBOTs operating under the no-action regime will vary, depending on whether or not the FBOT's original request was filed electronically and remains on file with the Commission.

The Commission's consideration of costs and benefits contains discussions of three general aspects of the rulemaking: the requirements for filing a new registration application; the limited application requirement for FBOTs operating under the current no-action regime; and compliance costs. The Commission is only considering the marginal costs and benefits of the proposed regulations that are in addition to, or in lieu of, the costs and benefits associated with the current no-action regime.

4. Filing a New Application for Registration

Costs: The Commission estimates that it will cost approximately $46,310 for an FBOT to submit a new registration application. This is based on an average wage for a compliance staffer and a compliance attorney of $46.31 per hour [70] and a total burden of 1,000 hours. The Commission recognizes that some FBOTs hire outside counsel based in the U.S. with expertise in the FBOT registration process. While the Commission is uncertain about the billing rates that FBOTs pay for U.S. counsel, the Commission believes that such counsel may bill at a rate of several hundred dollars per hour. U.S. counsel may be able to leverage its expertise to substantially reduce the number of hours needed to fill out an application, but an FBOT that utilizes outside counsel may incur higher costs than an FBOT that does not use outside counsel. The Commission notes that any determination to use outside counsel is at the discretion of the FBOT.

The Commission notes that the proposed registration process is an outgrowth of the existing policy of allowing FBOTs to provide U.S.-based traders with direct access to their trading systems through staff no-action letters and that most of the costs associated with this rule also are associated with applying for no-action relief. The costs that will be incurred by an FBOT as a result of the registration requirements and the conditions contained in the proposed regulations, with certain exceptions (*e.g.,* additional submission requirements related to the FBOTs regulatory authority and clearing and settlement policies and procedures), substantially replicate the costs that would otherwise be incurred by an FBOT applying for no-action relief under the existing process. For example, FBOTs requesting no-action relief under existing procedures are required to provide the Commission staff with similar information and documentation to that which would be required for registration under the proposed regulations (*e.g.,* information regarding the FBOT's trading system, terms and conditions of contracts to be made available by direct access in the U.S., and the regulatory regime governing the FBOT in its home country). The Commission believes that these costs, for the most part, do not represent a substantial increased burden, but rather reflect the continuation of an existing process—which is now proposed to be formalized. The Commission estimates that the increase in costs for new FBOTs to register rather than obtain a no-action letter is within a range between 100 hours or $4,631 per FBOT and 200 hours or $9,262 per FBOT.[71]

There may be some costs for certain FBOTs if they need to upgrade their systems or procedures to meet the registration requirements. For example, an FBOT electing to offer linked contracts that did not previously impose position limits may need to establish a procedure for enforcing position limits. The Commission is unable to quantify these costs since it does not know what particular changes future FBOTs may need to make in their systems or procedures to comply with the registration requirements. However, the Commission anticipates that FBOTs applying for registration in the future, like FBOTs that applied for no-action relief in the past, generally will be compliant with the requirements before submitting their applications, so the cost of upgrading their systems and procedures should be minimal for most FBOTs. As discussed in the preamble, the FBOT requirements generally reflect existing industry practice and FBOTs are required to be subject to a comparable regulatory regime. Therefore, the Commission expects that FBOTs that meet the requirements of their home regulator and follow industry practice will meet the registration requirements and that most FBOTs will not need to make any upgrades to their systems or procedures.

As noted above, the Commission has determined to amend its proposal to substantially reduce the information collection requirements for the six FBOTs with pending requests for no-action relief. Specifically, the final rules provide that an FBOT with a pending no-action request as of the effective date of the rule could, as part of its application for registration, identify information or documentation provided in its original no-action submission that would satisfy particular registration requirements. As noted in the PRA section, the Commission estimates that each of these FBOTs will have to devote 250 hours to converting the no-action request to a registration application at a cost of about $11,578 per FBOT for a cumulative cost of $69,468.

Benefits: The Commission notes that the no-action process has been effective in permitting FBOTs to provide for direct access while protecting U.S. persons trading by direct access by seeking to ensure that the FBOT's rules and procedures are adequate and that the regulatory regime of its home regulatory authority supports regulatory objectives that are substantially similar to those supported by the CFTC. The Commission believes that formalizing the registration process will provide the additional benefits of increased standardization for filing requirements and greater levels of legal certainty for operating FBOTs. In addition, formalized registration rules, including the application form, will create an efficient application process with enhanced visibility to ensure fair and consistent treatment of applicants. In particular, the registration procedure and application form will also assist applicants in determining what information needs to be provided to obtain registration, which may reduce costs by making it more likely that the application will be complete upon initial submission. These benefits, which are not readily quantifiable, are

[70] As noted on page six of the Paperwork Reduction Act Supporting Statement (PRA Supporting Statement) for the final FBOT registration rules, this number is derived from SIFMA's ''Report on Management & Professional Earnings in the Securities Industry—2010'' and represents the estimated average wage of a compliance attorney and a compliance staffer in the U.S. While wages in the home countries of FBOTs may differ, the Commission does not have access to data on the compensation of compliance staffers in other countries and is using the information in the SIFMA report as a best available estimate. The PRA Supporting Statement can be accessed at *http://www.reginfo.gov/public/do/PRAView Document?ref_nbr=201011-3038-003.*

[71] This increase in costs reflects the registration requirements that were not required in the no-action process, including additional submission requirements related to the FBOTs regulatory authority and clearing and settlement policies and procedures.

not, for the most part, currently available under the no-action process.

Public Comments: The Commission received comments about the registration system in general as well as about specific aspects, including the regulatory comparability and clearing requirements.

Registration System: Five commenters[72] stated that the proposed registration system was overly burdensome, overly prescriptive, or that it unnecessarily subjected FBOTs to duplicative regulation without corresponding benefit. OMX stated: ''Our main concern related to the proposed rules is that they will involve a quite extensive process in order to obtain and maintain registration. [* * *] [E]xtensive and detailed requirements * * * may be deemed to impose an unreasonable burden on the applicants.'' ESMA said, ''[T]he new registration procedure and the mandatory application of very comprehensive, ongoing requirements to all FBOTs would be burdensome and costly without any apparent improvements for the safeguard of public interests such as the maintenance of fair and orderly markets, investor protection and the resilience of the market.''

As discussed above, the Commission notes that the proposed registration process is an outgrowth of the existing policy of issuing no-action letters and that it entails costs that are similar to that of the existing no-action process.

In connection with commenters criticizing the ''overly prescriptive'' nature of the proposed rules, the Commission has identified, based upon its experience with its regulation of DCMs and the Commission staff experience in reviewing and evaluating FBOTs for purposes of no-action relief, several areas which it considers critical in determining if the FBOT has established its ability to provide on an ongoing basis, adequate protection to U.S. participants who trade and clear on the FBOT. These areas include, among others, compliance of the trading system with the IOSCO Principles, adequate trade practice and market surveillance programs, and a clearing and settlement organization that meets universally recognized standards. Moreover, amended CEA section 4(b) requires the Commission to consider whether the relevant FBOT is subject to comparable, comprehensive supervision and regulation by appropriate governmental authorities in the FBOT's home country. The Commission believes that, in these instances, rules are necessary in order to ensure that the Commission receives sufficient information and documentation to make these assessments and to ensure that registration applicants are subject to standardized and transparent obligations. The Commission also notes that the proposed regulations were drafted to provide flexibility where possible and warranted. For example, the final rules require the FBOT's clearing organization to successfully demonstrate that it satisfies the RCCPs, but do not mandate the manner in which the clearing organization must fulfill those principles.

Nonetheless, the Commission has identified specific areas in which it is able to set forth the FBOT registration requirements in a less-prescriptive manner. For example, the Commission is modifying the proposed regulations to clarify that an FBOT whose clearing organization is registered with the Commission as a DCO would not be required to separately establish that it satisfies the requirements contained in proposed § 48.7 (*e.g.*, a clearing organization that is registered as a DCO would not be required to demonstrate that its participants are fit and proper and meet appropriate financial and professional standards).

Finally, in an effort to avoid unnecessary duplication in the text of the rule, the Commission has removed the appendix from the rules and is replacing it with a standardized application form.

Regulatory Comparability: Two comment letters stated that the comparability analysis in conjunction with the broad set of requirements and conditions described in the proposed rules was overly burdensome. LME suggested that it would be better if the Commission made a single comparability determination for FBOTs residing in the same jurisdiction. CME suggested that the proposed comparability evaluation by the Commission was too burdensome on both FBOTs and the Commission. As an alternative, CME suggested that the Commission should limit its assessment to whether an FBOT is subject to a comparable regulatory regime by its home country regulator. This commenter said, ''[W]e have a significant concern that the proposed rules are too prescriptive and would impose significant burdens without corresponding benefit.''

The Commission reiterates that the statute requires that if the Commission implements a formal registration system, it must review whether any applicant ''is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the foreign board of trade's home country.'' The Commission does have discretion on how to implement this requirement and is using that discretion to revise the final rule to provide an option for evaluation of the regulatory authority when multiple FBOTs that are subject to the same regulatory regime are applying for registration at the same time. In other words, the rule, as adopted, would permit multiple FBOTs that are subject to the same regulatory regime that are applying for registration at the same time to collectively provide information regarding their regulatory regime and would permit a foreign regulator (rather than the FBOT) to provide the required information regarding the regulatory regime to which those multiple FBOTs may be subject. This should significantly reduce the cost burden to FBOTs when there are multiple FBOTs under the same regulatory regime. However, the Commission notes that any evaluation will not begin and end with a review of the FBOT's regulatory authority. The nature of the FBOT's trading and clearing systems, rule enforcement, surveillance practices, and information-sharing ability, among other things, are critical to any pre-registration review.

Clearing: As discussed in section II.B.2.d. above, Eurex stated that extending the Commission's review to FBOT clearing would impose increased burdens on the Commission's limited resources. This commenter suggested that the Commission should rather require than an FBOT simply demonstrate that, if its clearing organization is not a DCO, the clearing organization complies with the RCCPs.

The Commission notes that consideration of a foreign board of trade's clearing and settlement function, to a certain extent, is already incorporated into the existing no-action process and, accordingly, is not itself a totally new requirement. In this respect, the final rules seek to provide transparency and standardization with respect to the necessary clearing organization attributes by requiring that the clearing firm either satisfy an internationally recognized standard for central counterparties or be registered as a DCO. This will benefit U.S. persons trading on the FBOT by providing an added level of security in knowing that the FBOT's clearing organization has represented that it meets internationally recognized standards or is a DCO. The Commission, however, has streamlined the regulation in the final rule to eliminate the requirements contained in § 48.7 if the clearing firm is registered

[72] OMX, NYX, FOA, ESMA, and CME.

with the Commission as a DCO. The cost of demonstrating that a clearing organization is a DCO is *de minimus.* Because the manner of satisfying the RCCPs or their successor standards is at the discretion of the FBOT's clearing organization, the Commission is unable to quantify the costs of demonstrating that the clearing organization observes the RCCPs or their successor standards.

ICE stated that ''the CFTC should not place a greater burden on FBOTs than it does on U.S. regulated markets,'' in particular by imposing mandatory clearing requirements on swaps executed on FBOTs. ICE noted that SEFs are not subject to mandatory clearing requirements. However, the Commission notes that under the Dodd-Frank Act, swaps traded on DCMs will be subject to mandatory clearing requirements. The Commission believes that the treatment of swaps registered FBOTs will make available for trading to members and other participants located in the U.S. through direct access should parallel the treatment afforded to swaps transactions that may be traded on DCMs and, thus, they must be cleared. It is not clear whether a foreign SEF-equivalent would meet the FBOT eligibility requirements outlined in Rule 48.2(b) or be eligible for FBOT registration, but it is unlikely that such an entity would be eligible unless the entity could demonstrate that it is operated and regulated in a manner that is comparable and comprehensive to the manner in which DCMs (not U.S. SEFs), are regulated by the Commission. An FBOT could still offer non-cleared swaps to its market participants, but would be unable to offer such contracts via direct access in the U.S. The Commission is unable to quantify the costs of mandatory clearing of swaps on FBOT market participants, but such costs would approximate the costs of clearing futures since any listed swap contracts would have standardized terms and would resemble futures contracts. The Commission also cannot predict, at this time, whether FBOTs will elect to list swap contracts for direct access and, if so, how many FBOTs will make available how many swaps contracts.

5. Filing a Limited Application

Costs: As noted, the Commission is requiring the 20 FBOTs currently operating under no-action relief to register, but is permitting them to file a limited application for registration. This is an additional cost being imposed on these FBOTs as a consequence of this rule. The ten FBOTs that filed their no-action requests electronically will be able to simply refer to each portion of their original submissions that satisfies each particular registration requirement and certify that the information or documentation originally provided remains current and true. The Commission estimates that the cost of filing a limited application for each of these FBOTs will be approximately $2,316 (50 hours at $46.31 per hour) for a cumulative cost of $23,160. The remaining 10 FBOTs that did not file electronically will have to resubmit much of the material and therefore will each incur higher costs of approximately $11,578 (250 hours at $46.31 per hour) for a cumulative cost of $115,780. The cumulative cost across 20 FBOTs will be $138,940.

Benefits: FBOTs using the limited application process will receive the benefits noted above of receiving a formal Commission registration order rather than a staff no-action letter (which provided for less legal certainty). These FBOTs will be operating on firmer legal ground and the Commission, market participants, and the public will benefit from the knowledge that all FBOTs offering direct access in the U.S. meet the registration requirements. There are also benefits that accrue to registering all FBOTs under the same transparent requirements, thus ensuring a ''level playing field'' going forward and ensuring that the Commission has the same set of information on file regarding each registered FBOT.

Public Comments: As discussed above, several commenters [73] addressed the proposed ''limited application'' scheme, suggesting that the limited application was overly burdensome, of limited value, or even unnecessary—preferring a grandfather provision for FBOTs operating under existing no-action relief. They commented in the context of the cost benefit section that the limited application process was too burdensome in its entirety for an FBOT that had previously obtained no-action relief. And at least two of the commenters, DME and CME, noted that, in the context of evaluating the burdens imposed by the proposed registration process, providing grandfather registration for FBOTs with existing no-action relief would be the better course. Finally, as addressed above, multiple commenters requested that the time-frame within which a limited application must be filed should be extended to at least 180 days following the effective date of final registration rules in order to ease the administrative burden of preparing and filing the proper documentation. Specifically, NYX stated:

> Under the [p]roposal, an FBOT with an existing no-action relief letter is required to submit a completed limited application for registration within 120 days of the effective date of the Proposal. The Proposal, however, would create a burdensome process requiring re-submission of voluminous materials, information and data that was previously provided to the Commission—a time-consuming and expensive exercise for FBOTs that previously have invested considerable resources to receive and maintain no-action relief letters.

In the context of the burdens of preparing documentation for the limited application, MX argues that, ''Placing greater reliance on [the Commission's] past findings [of comparability] under the no-action process will not only lessen the burden on FBOTs, but it will conserve constrained Commission resources with no diminution of protections to the public or any increase in systemic risk.'' NGX stated that an FBOT with a pending no-action request should be considered to be eligible to file a limited application rather than a complete application.

As discussed above, the Commission is extending the time for filing a limited application to 180 days from 120 after the effective date of this final rule. This change will address comments that the 120 day timeline placed an excessive burden on applicants. The Commission also is revising the rule to permit an FBOT with a pending no-action request to file a limited application rather than a complete application.

The limited application procedure will, as noted, benefit market participants, and the public by ensuring that all FBOTs offering direct access in the U.S. meet the current registration requirements. This benefit would be foregone if the Commission were to grandfather FBOTs that are operating under existing no-action relief without any further review. FBOT requests for no-action relief were assessed based upon the information and documentation presented at the particular time of the request (as early as 1999) and the assessments were based upon a comparison of the regulatory regimes in the U.S. and the applicable foreign jurisdiction that existed at the time. In addition, early no-action letters included only a limited analysis of the FBOT's clearing system because the current regulatory structure applicable to U.S. clearing organizations did not exist at that time of issuance.

The Commission also does not believe that it would be either feasible or appropriate for the Commission staff to ascertain for each FBOT operating under

[73] BM&F, OMX, NYX, DME, CME, and MX.

existing no-action relief the precise information in its individual no-action request that would need to be updated or revised to satisfy registration requirements. The FBOTs are in a better position to recognize their own particular circumstances and to identify the additional information and documentation that may require updating in light of those changes. The FBOT should be afforded the opportunity to provide materials demonstrating that the foreign regime is comparable and comprehensive to the regulatory regime in the U.S.

6. Complying With Conditions Applicable to Registration

Once registered, an FBOT will be required to file a number of reports with the Commission. Most of these reports are required under the current no-action regime and therefore requiring these reports of registrants will not impose additional costs on FBOTs that are currently providing direct access pursuant to no-action letters. Specific reporting requirements that are currently required under the no-action regime include § 48.8(b)(1)(i)(A) and (B) regarding trading volume information, § 48.8(b)(1)(ii)(A)–(F) regarding material changes to registration information (except where requirements specifically address the FBOT's clearing organization), and § 48.10 regarding the listing of additional futures and options contracts. New requirements include § 48.8(b)(1)(iii)(B)–(G) regarding annual submission of information and § 48.9 regarding demonstration of compliance with conditions for registration, as well as the requirement regarding material changes to the clearing organization. In the PRA section of the NPRM, it was estimated that the total annual burden of all reporting requirements for all registered FBOTs combined was 972 hours.[74] The Commission estimates that approximately 150 of these 972 hours represent the new reporting requirements that were not required under the no-action regime and the cumulative annual cost of complying with these new requirements will be $6,947 (150 hours at $46.31 per hour).

There are also a number of provisions that apply to contracts that are linked to U.S. futures contracts. These provisions, set forth in § 48.8(c)(1) and described above, and their associated costs generally are required under the CEA as amended by Dodd-Frank and the Commission lacks discretion regarding their implementation. Other provisions, set forth in § 48.8(c)(2), are also currently imposed on FBOTs with linked contracts operating under no-action relief.[75] Therefore, the costs associated with the linked contract provisions required by § 48.8(c)(2) are not increased relative to those incurred by FBOTs currently.

Benefits: The new recordkeeping requirements in Regulation 48.8(b)(1)(iii)(B)–(G) regarding annual submission of information and Regulation 48.9 regarding demonstration of compliance with conditions for registration will provide the Commission, market participants and the public with the benefit of knowing that registered FBOTs are continuing to meet the requirements for registration, including providing fair and equitable trading platforms, and that the contracts available for direct access are not readily susceptible to manipulation.

Public comments: The Commission received cost-benefit related comments regarding the linked contract provisions.

Linked contract provisions: In connection with the burdens imposed by the proposed linked contract provisions, OSE stated that extra conditions were only necessary for FBOTs offering linked contracts in which there is more than a de minimis amount of trading. OSE specifically highlighted the imposition of speculative position limits on linked contracts as an example of a condition which would create an excessive burden. OSE also objected to the requirement that trade execution and audit trail data for linked contracts be submitted to the Commission on a daily basis. They suggested that the benefit of such a condition, in comparison to the costs, may be more useful if FBOTs were only required to submit trade execution and audit trail data for linked contracts on an ''as necessary'' basis—rather than on a daily basis.

The Commission notes that some of the linked contract conditions/requirements in the final rule are mandated by the Dodd-Frank Act, including the position limit requirements. Other provisions, such as the requirement that trade execution and audit trail data for linked contracts be submitted to the Commission on a daily basis, have been imposed by Commission staff on FBOTs that list linked contracts and have been found to be useful in accomplishing the Commission's market surveillance responsibilities. Commission staff conducts surveillance and reviews the trading data on a daily basis, and the trade data submitted daily from the FBOT's linked contract are a critical component of this surveillance. The Commission is of the opinion that the linked contract provisions serve to enhance the Commission's market surveillance capabilities because such linkages create a single market for the subject contracts and, in the absence of certain preventive measures at the FBOT, could compromise the Commission's ability to carry out its market surveillance responsibilities. Because of the linkage, the trading of the linked contracts on an FBOT potentially affects the pricing of contracts traded on U.S.-registered entities.

Section 15(a) Factors

1. Protection of Market Participants and the Public

The final rules will further the protection of market participants and the public in numerous ways, including ensuring that FBOTs' automated trading systems comply with the IOSCO principles, match trades fairly and timely with a proper audit trail, and meet other requirements as described in Rule 48.7(b) and that the clearing organizations are DCOs or observe the RCCPs or their successor standards. The rules requiring that contracts offered by FBOTs are not readily susceptible to manipulation and the rules regarding linked contracts, including the requirement that linked contracts have appropriate position limits, will also further the protection of market participants and the public. Further protection is provided by the requirement that FBOTs offering direct access to U.S. participants and their clearing organizations have proper rule enforcement procedures and are subject to comprehensive supervision and regulation by the appropriate government authorities in their home country that is comparable to the Commission's comprehensive supervision and regulation and that information sharing agreements are in place. Finally, the examination of FBOT and clearing organization membership standards will also further the protection of market participants and the public.

2. Efficiency, Competitiveness, and Financial Integrity of the Markets

The requirements that the FBOTs' automated trading systems contain a trade matching algorithm that matches trades in a fair and timely manner and that trading data be made available to users and the public will further the efficiency and competitiveness of the markets. The financial integrity of the markets will be furthered by the rules

[74] *See* 75 FR 70984–85 (Nov. 19, 2010) and PRA Supporting Statement at 12 (Nov. 23, 2010).

[75] *See* CFTC Letter No. 09–37 (August 20, 2009).

requiring that clearing organizations be DCOs and meet DCO requirements or specifically represent that they observe each of the RCCPs (or their successor standards) and by the examination of FBOT and clearing organization membership standards. The rules requiring that contracts offered by FBOTs not be readily susceptible to manipulation will also further these considerations. The linked contract rules, including the position limit requirement, will also further the efficiency, competitiveness, and financial integrity of markets.

3. Price Discovery

The rules regarding the automated trading systems, including the trade matching rule, will further the price discovery process in FBOT contracts. The linked contract provisions will protect the price discovery process for linked contracts and the U.S. contracts that they are linked to by ensuring that the linked contracts have position limits and accountability provisions comparable to the corresponding U.S.-based contracts and that the price and volume data for linked contracts are disseminated in a comparable manner to their U.S. counterparts. The rules requiring that contracts offered by FBOTs for direct access not be readily susceptible to manipulation will also help protect the price discovery process.

4. Sound Risk Management Procedures

The requirement that FBOTs' clearing organizations be DCOs or demonstrate observance of the RCCPs or their successor standards will further sound risk management procedures by ensuring that clearing organizations represent that they use risk management procedures that are consistent either with Commission regulations or internationally recognized standards.

5. Other Public Interest Considerations

The Commission believes that adopting formal registration provisions will further other public interest considerations by replacing the no-action procedure with a standardized and transparent application process and providing enhanced legal certainty to registered FBOTs and their clearing organizations.

C. The Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires Federal agencies to consider the impact of its rules on ''small entities.'' [76] A regulatory flexibility analysis or certification typically is required for ''any rule for which the agency publishes a general notice of proposed rulemaking pursuant to'' the notice-and-comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b).[77] The Commission noted in the proposing release that although it has established certain definitions of ''small entity'' to be used in evaluating the impact of its rules under the RFA, it had not previously addressed the question of whether FBOTs are small entities for purposes of the RFA.[78] The Commission previously determined that DCMs are not small entities for purposes of the RFA.[79] In the proposing release, the Commission determined that because FBOTs and DCMs are functionally equivalent entities, FBOTs like DCMs are not ''small entities'' for purposes of the RFA.

In response to the Proposed Rules, the Not-For-Profit Electric End User Coalition (Coalition) submitted a comment generally criticizing the Commission's ''rule-makings [as] an accumulation of interrelated regulatory burdens and costs on non-financial small entities like the NFP Electric End Users, who seek to transact in Energy Commodity Swaps and ''referenced contracts'' only to hedge the commercial risks of their not-for-profit public service activities.'' [80] In addition, the Coalition requested ''that the Commission streamline the use of the bona fide hedging exemption for non-financial entities, especially for those that engage in CFTC-regulated transactions as 'end user only/bona fide hedger only' market participants.''

After further consideration in light of this comment, the Commission has determined that this final rulemaking, which is applicable only to FBOTs, will not have a substantial economic effect on a substantial number of small businesses. Accordingly, for the reasons stated in the proposal and the fact that the Coalition does not represent bodies that will be registering with the Commission as FBOTs, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that these rules will not have a significant economic impact on a substantial number of small entities. The Chairman made the same certification in the NPRM, and the Commission did not receive any comments on the RFA in relation to the proposed rulemaking.

List of Subjects in 17 CFR Part 48

Foreign Boards of Trade, Commodity futures, Options, Swaps, Direct Access, Linked Contract, Registration, Existing No-action Relief, Conditions of Registration.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and, in particular, sections 3, 4 and 8a of the Act, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations by adding part 48 to read as follows:

PART 48—REGISTRATION OF FOREIGN BOARDS OF TRADE

Sec.
48.1 Scope.
48.2 Definitions.
48.3 Registration required.
48.4 Registration eligibility and scope.
48.5 Registration procedures.
48.6 Foreign boards of trade providing direct access pursuant to existing no-action relief.
48.7 Requirements for registration.
48.8 Conditions of registration.
48.9 Revocation of registration.
48.10 Additional contracts.
Appendix—Part 48—Form FBOT

Authority: 7 U.S.C. 5, 6 and 12a, unless otherwise noted.

§ 48.1 Scope.

The provisions of this part apply to any foreign board of trade that is registered, required to be registered, or applying to become registered with the Commission in order to provide its identified members or other participants located in the United States with direct access to its electronic trading and order matching system.

§ 48.2 Definitions.

For purposes of this part:

(a) *Foreign board of trade.* Foreign board of trade means any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated.

(b) *Foreign board of trade eligible to be registered.* A foreign board of trade eligible to be registered means a foreign board of trade that satisfies the requirements for registration specified in § 48.7 and:

(1) Possesses the attributes of an established, organized exchange,

(2) Adheres to appropriate rules prohibiting abusive trading practices,

(3) Enforces appropriate rules to maintain market and financial integrity,

(4) Has been authorized by a regulatory process that examines customer and market protections, and

(5) Is subject to continued oversight by a regulator that has power to intervene in the market and the authority to share information with the Commission.

[76] 5 U.S.C. 601 *et seq.*

[77] 5 U.S.C. 601(2), 603, 604 and 605.

[78] *See* 75 FR 70987 (Nov. 19, 2010).

[79] *See* 47 FR 18618, 18619, Apr. 30, 1982.

[80] *See* Coalition at 29.

(c) *Direct access.* Direct access means an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade.

(d) *Linked contract.* Linked contract means a futures, option or swap contract that is made available for trading by direct access by a registered foreign board of trade that settles against any price (including the daily or final settlement price) of one or more contracts listed for trading on a registered entity as defined in section 1a(40) of the Act.

(e) *Communications.* Communications means any written or electronic documentation or correspondence issued by or on behalf of the Commission, the United States Department of Justice, or the National Futures Association.

(f) *Material change.* Material change means a material change in the information provided to the Commission in support of an application for registration under this part. Subsequent to registration, material change also includes a material change in the operations of the foreign board of trade or its clearing organization and, without limitation, a change in any of the following: The membership or participant criteria of the foreign board of trade or its clearing organization; the location of the management, personnel or operations of the foreign board of trade or its clearing organization; the structure, nature, or operation of the trading or clearing systems; the regulatory or self-regulatory regime applicable to the foreign board of trade, its clearing organization, or their respective members and other participants; the authorization, licensure, registration or recognition of the foreign board of trade or clearing organization; and the ability of the clearing organization to observe the Recommendations for Central Counterparties.

(g) *Clearing organization.* Clearing organization means the foreign board of trade, affiliate of the foreign board of trade or any third party clearing house, clearing association, clearing corporation or similar entity, facility or organization that, with respect to any agreement, contract or transaction executed on or through the foreign board of trade, would be:

(1) Defined as a derivatives clearing organization under section 1a(15) of the Act; or

(2) Defined as a central counterparty by the Recommendations for Central Counterparties.

(h) *Existing no-action relief.* Existing no-action relief means a no-action letter issued by a division of the Commission to the foreign board of trade in which the division informs the foreign board of trade that it will not recommend that the Commission institute enforcement action against the foreign board of trade if the foreign board of trade does not seek designation as either a designated contract market pursuant to section 5 of the Act or a derivatives transaction execution facility pursuant to section 5a of the Act in connection with the granting of direct access.

(i) *Swap.* Swap means a swap as defined in section 1a(47) of the Act and any Commission regulation further defining the term adopted thereunder.

(j) *Recommendations for Central Counterparties.* Recommendations for Central Counterparties means:

(1) The current Recommendations for Central Counterparties issued jointly by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions as updated, revised or otherwise amended; or

(2) Successor standards, principles and guidance for central counterparties or financial market infrastructures adopted jointly by the Technical Committee of the International Organization of Securities Commissions and the Committee on Payment and Settlement Systems.

(k) *Affiliate.* An affiliate of a registered foreign board of trade member or other participant means any person, as that term is defined in section 1a(38) of the Act, that:

(1) Owns 50% or more of the member or other participant;

(2) Is owned 50% or more by the member or other participant; or

(3) Is owned 50% or more by a third person that also owns 50% or more of the member or other participant.

(l) *Member or other participant.* Member or other participant means a member or other participant of a foreign board of trade that is registered under this part and any affiliate thereof that has been granted direct access by the foreign board of trade.

§ 48.3 Registration required.

(a) Except as specified in this part, it shall be unlawful for a foreign board of trade to permit direct access to its electronic trading and order matching system unless and until the Commission has issued a valid and current Order of Registration to the foreign board of trade pursuant to the provisions of this part.

(b) It shall be unlawful for a foreign board of trade or the clearing organization to make false or misleading statements in or in connection with any application for registration under this part.

§ 48.4 Registration eligibility and scope.

(a) Only foreign boards of trade eligible to be registered, as defined in § 48.2(b) of this part, are eligible for registration with the Commission pursuant to this part.

(b) A foreign board of trade may apply for registration under this part in order to permit the members and other participants of the foreign board of trade that are located in the United States to enter trades directly into the trading and order matching system of the foreign board of trade, to the extent that such members or other participants are:

(1) Entering orders for the member's or other participant's proprietary accounts;

(2) Registered with the Commission as futures commission merchants and are submitting customer orders to the trading system for execution; or

(3) Registered with the Commission as a commodity pool operator or commodity trading advisor, or are exempt from such registration pursuant to § 4.13 or § 4.14 of this chapter, and are submitting orders for execution on behalf of a United States pool that the member or other participant operates or an account of a United States customer for which the member or other participant has discretionary authority, respectively, provided that a futures commission merchant or a firm exempt from such registration pursuant to § 30.10 of this chapter acts as clearing firm and guarantees, without limitation, all such trades of the commodity pool operator or commodity trading advisor effected through submission of orders to the trading system.

§ 48.5 Registration procedures.

(a) A foreign board of trade seeking registration with the Commission pursuant to this part must electronically file an application for registration with the Secretary of the Commission at its Washington DC headquarters at *FBOTapplications@cftc.gov.*

(b) A complete application for registration must include:

(1) A completed Form FBOT and Form Supplement S–1, as set forth in the Appendix to this part, or any successor forms, and all information and documentation described in such forms; and

(2) Any additional information and documentation necessary, in the discretion of the Commission, to supplement the application including, but not limited to, documentation and

information provided during the course of an on-site visit, as applicable, to the foreign board of trade, the clearing organization and the regulatory authority or authorities, to effectively demonstrate that the foreign board of trade and its clearing organization satisfy the registration requirements set forth in § 48.7.

(c) An applicant for registration must identify with particularity any information in the application that will be subject to a request for confidential treatment and must provide support for any request for confidential treatment pursuant to the procedures set forth in § 145.9 of this chapter.

(d) If, upon review, the Commission finds the application for registration to be complete, the Commission may approve or deny the application. In reviewing the application, the Commission will consider, among other things:

(1) Whether the foreign board of trade is eligible to be registered as defined in § 48.2(b) and;

(2) Whether the foreign board of trade and its clearing organization are subject to comprehensive supervision and regulation by the appropriate governmental authorities in their home country or countries that is comparable to the comprehensive supervision and regulation to which designated contract markets and derivatives clearing organizations are respectively subject under the Act, Commission regulations, and other applicable United States laws and regulations, if any, and;

(3) Any previous Commission findings that the foreign board of trade and its clearing organization are subject to comprehensive supervision and regulation by the appropriate government authorities in their home country or countries that is comparable to the comprehensive supervision and regulation to which designated contract markets and derivatives clearing organizations are subject under the Act, Commission regulations, and other applicable United States laws and regulations, if any; and

(4) Whether the foreign board of trade and its clearing organization have adequately demonstrated that they meet the requirements for registration specified in § 48.7.

(5) The Commission's determination that the foreign board of trade and its clearing organization are subject to comprehensive supervision and regulation by the appropriate government authorities in their home country or countries that is comparable to the comprehensive supervision and regulation to which designated contract markets and derivatives clearing organizations are subject will be based upon a principles-based review conducted in a manner consistent with this part 48 pursuant to which the Commission will look to determine if the government authorities support and enforce regulatory objectives in the oversight of the foreign board of trade and the clearing organization that are substantially equivalent to the regulatory objectives supported and enforced by the Commission in its oversight of designated contract markets and derivatives clearing organizations.

(e) If the Commission approves the application, the Commission will issue an Order of Registration. If the Commission does not approve the application, the Commission will, after appropriate notice and an opportunity to respond, issue a Notice of Action specifying that the application was not approved and setting forth the reasons therefor. The Commission, in its discretion, may impose conditions in the Order of Registration and may, after appropriate notice and an opportunity to respond, amend, suspend, or otherwise restrict the terms of an issued Order of Registration or issue an Order revoking registration.

(f) A foreign board of trade whose application is not approved may reapply for registration 360 days after the issuance of the Notice of Action if the foreign board of trade has addressed any deficiencies in its original application or facts and circumstances relevant to the Commission's review of the application have changed.

§ 48.6 Foreign boards of trade providing direct access pursuant to existing no-action relief.

(a) A foreign board of trade operating pursuant to existing no-action relief as of the effective date of this Part 48 must register with the Commission pursuant to this part in order to continue to provide direct access to its electronic trading and order matching system from the United States.

(b)(1) The application of a foreign board of trade operating pursuant to existing no-action relief must include a complete Form FBOT and Supplement S–1, as set forth in the Appendix to this part. If the foreign board of trade, as part of its application for registration, wishes to rely on information and documentation previously submitted electronically in connection with its request for no-action relief in order to demonstrate that it satisfies the registration requirements set forth in § 48.7, (limited application) the foreign board of trade must:

(i) Specifically identify the information or documentation previously submitted;

(ii) Identify the specific registration requirements set forth in § 48.7 that are satisfied by such information or documentation; and

(iii) Certify that the information remains accurate and current.

(2) If the foreign board of trade wishes to rely on information and documentation previously submitted in hard copy in connection with its application for no-action relief, the foreign board of trade must also resubmit the identified information or documentation. A foreign board of trade that has submitted a complete application for no-action relief that is pending as of February 21, 2012 may also apply for registration pursuant to these limited application procedures.

(c) A foreign board of trade operating pursuant to existing no-action relief must submit a limited application for registration, determined in good faith by the applicant to be complete, within 180 days of February 21, 2012. If, at any time after August 20, 2012 but before a limited application is approved or disapproved, the Commission determines that the application is materially incomplete, the Commission may, after providing the foreign board of trade with notice and an opportunity to respond to the determination of incompleteness, withdraw the existing no-action relief if the Commission determines that the application cannot be made complete in a timely manner. The foreign board of trade may continue to operate pursuant to the existing no-action relief, subject to the terms and conditions contained therein, August 20, 2012, while the Commission is reviewing its application, and until the Commission approves or disapproves the application or otherwise withdraws the existing no-action relief. The no-action relief is automatically withdrawn upon issuance of an Order of Registration or upon disapproval.

§ 48.7 Requirements for registration.

An applicant for registration must demonstrate that it and, where applicable, its clearing organization meet the following requirements. The registration requirements applicable to clearing organizations may alternatively be met by demonstrating that the clearing organization is registered and in good standing with the Commission as a derivatives clearing organization. The Commission, in its discretion, may request additional information and documentation in connection with an application for registration and an applicant for registration must provide

promptly any such additional information or documentation. The Commission, in its discretion, also may impose additional registration requirements that the Commission deems necessary after appropriate notice and opportunity to respond.

(a) Foreign Board of Trade and Clearing Membership:

(1) The members and other participants of the foreign board of trade and its clearing organization are fit and proper and meet appropriate financial and professional standards;

(2) The foreign board of trade and its clearing organization have and enforce provisions to minimize and resolve conflicts of interest; and

(3) The foreign board of trade and its clearing organization have and enforce rules prohibiting the disclosure, both during and subsequent to service on a board or committee, of material non-public information obtained as a result of a member's or other participant's performance of duties as a member of their respective governing boards and significant committees.

(b) The Automated Trading System:

(1) The trading system complies with Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commissions,

(2) The trade matching algorithm matches trades fairly and timely,

(3) The audit trail captures all relevant data, including changes to orders, and audit trail data is securely maintained and available for an adequate time period,

(4) Adequate and appropriate trade data is made available to users and the public,

(5) The trading system has demonstrated reliability,

(6) Access to the trading system is secure and protected,

(7) There are adequate provisions for emergency operations and disaster recovery,

(8) Trading data is backed up to prevent loss of data, and

(9) Only those futures, option or swap contracts that have been identified to the Commission in the foreign board of trade's application for registration or permitted to be made available for trading by direct access pursuant to the procedures set forth in § 48.10 of this part are made available for trading by direct access.

(c) Terms and Conditions of Contracts to Be Made Available in the United States.

(1) Contracts must meet the following standards:

(i) Contracts must be futures, option or swap contracts that would be eligible to be traded on a designated contract market;

(ii) Contracts must be cleared;

(iii) Contracts must not be prohibited from being traded by United States persons; and

(iv) Contracts must not be readily susceptible to manipulation.

(2) Foreign futures and option contracts on non-narrow-based security indexes must have been certified by the Commission pursuant to the procedures set forth in § 30.13 of this chapter.

(3) Contracts that have the following characteristics must be specifically identified as having such characteristics:

(i) Contracts that are linked to a contract listed for trading on a registered entity as defined in section 1a(40) of the Act, and

(ii) Contracts that have any other relationship with a contract listed for trading on a registered entity (for example, if both the foreign board of trade's and the registered entity's contract settle to the price of the same third party-constructed index).

(d) Settlement and Clearing:

(1) The clearing organization observes the Recommendations for Central Counterparties or is registered with the Commission as a derivatives clearing organization, and

(2) The clearing organization is in good regulatory standing in its home country jurisdiction.

(e) The Regulatory Regimes Governing the Foreign Board of Trade and the Clearing Organization:

(1) The regulatory authorities provide comprehensive supervision and regulation of the foreign board of trade, the clearing organization, and the type of contracts to be made available through direct access that is comparable to the comprehensive supervision and regulation provided by the Commission to designated contract markets, derivatives clearing organizations and such contracts. That is, the regulatory authorities support and enforce regulatory objectives in the oversight of the foreign board of trade, clearing organization and the type of contracts that the foreign board of trade wishes to make available through direct access that are substantially equivalent to the regulatory objectives supported and enforced by the Commission in its oversight of designated contract markets, derivatives clearing organizations, and such products.

(2) The regulatory authorities engage in ongoing regulatory supervision and oversight of the foreign board of trade and its trading system, the clearing organization and its clearing system, and the members, intermediaries and other participants of the foreign board of trade and clearing organization, with respect to, among other things, market integrity, customer protection, clearing and settlement and the enforcement of the rules of the foreign board of trade and the clearing organization.

(3) The regulatory authorities have the power to share information directly with the Commission, upon request, including information necessary to evaluate the continued eligibility of the foreign board of trade for registration and to audit for compliance with the terms and conditions of the registration.

(4) The regulatory authorities have the power to intervene in the market.

(f) The Rules of the Foreign Board of Trade and the Clearing Organization and Enforcement Thereof:

(1) The foreign board of trade and its clearing organization have implemented and enforce rules to ensure compliance with the requirements of registration contained in this part;

(2) The foreign board of trade and its clearing organization have the capacity to detect, investigate, and sanction persons who violate their respective rules;

(3) The foreign board of trade and the clearing organization (or their respective regulatory authorities) have implemented and enforce disciplinary procedures that empower them to recommend and prosecute disciplinary actions for suspected rule violations, impose adequate sanctions for such violations, and provide adequate protections to charged parties pursuant to fair and clear standards;

(4) The foreign board of trade and its clearing organization are authorized by rule or by contractual agreement to obtain, from members and other participants, any information and cooperation necessary to conduct investigations, to effectively enforce their respective rules, and to ensure compliance with the conditions of registration;

(5) The foreign board of trade and its clearing organization have sufficient compliance staff and resources, including by delegation and/or outsourcing to a third party, to fulfill their respective regulatory responsibilities, including appropriate trade practice surveillance, real time market monitoring, market surveillance, financial surveillance, protection of customer funds, enforcement of clearing and settlement provisions and other compliance and regulatory responsibilities;

(6) The foreign board of trade has implemented and enforces rules with respect to access to the trading system

and the means by which the connection thereto is accomplished;

(7) The foreign board of trade's audit trail captures and retains sufficient order and trade-related data to allow its compliance staff to detect trading and market abuses and to reconstruct all transactions within a reasonable period of time;

(8) The foreign board of trade has implemented and enforces rules prohibiting fraud and abusive trading practices including, but not limited to, wash sales and trading ahead;

(9) The foreign board of trade has the capacity to detect and deter, and has implemented and enforces rules relating to, market manipulation, attempted manipulation, price distortion, and other disruptions of the market; and

(10) The foreign board of trade has and enforces rules and procedures that ensure a competitive, open and efficient market and mechanism for executing transactions.

(g) Information Sharing:

(1) The regulatory authorities governing the activities of the foreign board of trade and the clearing organization are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding, or otherwise ensure that substitute information sharing arrangements that are satisfactory to the Commission are in place;

(2) The regulatory authorities governing the activities of the foreign board of trade and the clearing organization are signatories to the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations or otherwise commit, in writing, to share the types of information contemplated by the International Information Sharing Memorandum of Understanding and Agreement with the Commission;

(3) The foreign board of trade has executed the International Information Sharing Memorandum of Understanding and Agreement; and

(4) Pursuant to the conditions described in § 48.8(a)(6), the foreign board of trade and clearing organization agree to provide directly to the Commission, upon request, any information necessary, in the discretion of the Commission, to evaluate the continued eligibility and appropriateness of the foreign board of trade and the clearing organization, or their respective members or other participants for registration, to audit for and enforce compliance with the requirements and conditions of the registration, or to enable the Commission to carry out its duties under the Act and Commission regulations.

§ 48.8 Conditions of registration.

Upon registration under this part, and on an ongoing basis thereafter, the foreign board of trade and the clearing organization shall comply with the applicable conditions of registration set forth in this section and any additional conditions that the Commission deems necessary and may impose, in its discretion, and after appropriate notice and opportunity to respond. Such conditions could include, but are not limited to, additional conditions applicable to the listing of swap contracts. Continued registration is expressly conditioned upon satisfaction of these conditions.

(a) Specified Conditions for Maintaining Registration

(1) Registration Requirements: The foreign board of trade and its clearing organization shall continue to satisfy all of the requirements for registration set forth in § 48.7.

(2) Regulatory Regime:

(i) The foreign board of trade will continue to satisfy the criteria for a regulated market or licensed exchange pursuant to the regulatory regime described in its application and will continue to be subject to oversight by the regulatory authorities described in its application.

(ii) The clearing organization will continue to satisfy the criteria for a regulated clearing organization pursuant to the regulatory regime described in the application for registration and will continue to be in good standing with the relevant regulatory authority.

(iii) The laws, systems, rules, and compliance mechanisms of the regulatory regime applicable to the foreign board of trade will continue to require the foreign board of trade to maintain fair and orderly markets; prohibit fraud, abuse, and market manipulation and other disruptions of the market; and provide that such requirements are subject to the oversight of appropriate regulatory authorities.

(3) Satisfaction of International Standards:

(i) The foreign board of trade will continue to comply with the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commissions, as updated, revised, or otherwise amended, to the extent such principles do not contravene United States law.

(ii) The clearing organization will continue to:

(A) Be registered with the Commission as a derivatives clearing organization and be in compliance with the laws and regulations related thereto; or

(B) Observe the Recommendations for Central Counterparties.

(4) Restrictions on Direct Access:

(i) Only the foreign board of trade's identified members or other participants will have direct access to the foreign board of trade's trading system from the United States and the foreign board of trade will not provide, and will take reasonable steps to prevent, third parties from providing direct access to persons other than the identified members or other participants.

(ii) All orders that are transmitted to the foreign board of trade's trading system by a foreign board of trade's identified member or other participant that is operating pursuant to the foreign board of trade's registration will be solely for the member's or trading participant's own account unless such member or other participant is registered with the Commission as a futures commission merchant or such member or other participant is registered with the Commission as a commodity pool operator or commodity trading advisor, or is exempt from such registration pursuant to § 4.13 or § 4.14 of this chapter, provided that a futures commission merchant or a firm exempt from such registration pursuant to § 30.10 of this chapter acts as clearing firm and guarantees, without limitation, all such trades of the commodity pool operator or commodity trading advisor effected through submission of orders on the trading system.

(5) Submission to Commission Jurisdiction:

(i) Prior to operating pursuant to registration under this part and on a continuing basis thereafter, a registered foreign board of trade will require that each current and prospective member or other participant that is granted direct access to the foreign board of trade's trading system and that is not registered with the Commission as a futures commission merchant, a commodity trading advisor or a commodity pool operator, file with the foreign board of trade a written representation, executed by a person with the authority to bind the member or other participant, stating that as long as the member or other participant is authorized to enter orders directly into the trade matching system of the foreign board of trade, the member or other participant agrees to and submits to the jurisdiction of the Commission with respect to activities conducted pursuant to the registration.

(ii) The foreign board of trade and its clearing organization will file with the Commission a valid and binding appointment of an agent for service of process in the United States pursuant to which the agent is authorized to accept delivery and service of communications, as defined in § 48.2(e) issued by or on behalf of the Commission, the United States Department of Justice, or the National Futures Association.

(iii) The foreign board of trade, clearing organization, and each current and prospective member or other participant that is granted direct access to the foreign board of trade's trading system and that is not registered with the Commission as a futures commission merchant, a commodity trading advisor, or a commodity pool operator will maintain with the foreign board of trade written representations, executed by persons with the authority to bind the entity making them, stating that as long as the foreign board of trade is registered under this regulation, the foreign board of trade, the clearing organization or member of either or other participant granted direct access pursuant to this regulation will provide, upon the request of the Commission, the United States Department of Justice and, if appropriate, the National Futures Association, prompt access to the entity's, member's, or other participant's original books and records or, at the election of the requesting agency, a copy of specified information containing such books and records, as well as access to the premises where the trading system is available in the United States.

(iv) The foreign board of trade will maintain all representations required pursuant to § 48.8(a)(5) as part of its books and records and make them available to the Commission upon request.

(6) Information Sharing:

(i) Information-sharing arrangements satisfactory to the Commission, including but not limited to those set forth in § 48.7(g), are in effect between the Commission and the regulatory authorities that govern the activities of both the foreign board of trade and the clearing organization.

(ii) The Commission is, in fact, able to obtain sufficient information regarding the foreign board of trade, the clearing organization, their respective members and participants and the activities related to the foreign board of trade's registration.

(iii) The foreign board of trade and its clearing organization, as applicable, will provide directly to the Commission any information necessary to evaluate the continued eligibility and appropriateness of the foreign board of trade for registration, the capability and determination to enforce compliance with the requirements and conditions of the registration, or to enable the Commission to carry out its duties under the Act and Commission regulations and to provide adequate protection to the public or United States registered entities.

(iv) In the event that the foreign board of trade and the clearing organization are separate entities, the foreign board of trade will require the clearing organization to enter into a written agreement in which the clearing organization is contractually obligated to promptly provide any and all information and documentation that may be required of the clearing organization under this regulation and such agreement shall be made available to the Commission, upon request.

(7) Monitoring for Compliance: The foreign board of trade and the clearing organization will employ reasonable procedures for monitoring and enforcing compliance with the specified conditions of its registration.

(8) On-Site Visits: The foreign board of trade and the clearing organization will permit and will cooperate with Commission staff with respect to on-site visits for the purpose of overseeing ongoing compliance of the foreign board of trade and the clearing organization with registration requirements and conditions of registration.

(9) Conditions Applicable to Swap Trading:

(i) The foreign board of trade will ensure that all transaction data relating to each swap transaction, including price and volume, are reported as soon as technologically practicable after execution of the swap transaction to a swap data repository that is either registered with the Commission or has an information sharing arrangement with the Commission.

(ii) The foreign board of trade will agree to coordinate with the Commission with respect to arrangements established to address cross market oversight issues involving swap trading, including surveillance, emergency actions and the monitoring of trading.

(b) Other Continuing Obligations.

(1) Registered foreign boards of trade and their clearing organizations will continue to comply with the following obligations on an ongoing basis:

(i) The foreign board of trade will maintain the following updated information and submit such information to the Commission on at least a quarterly basis, not later than 30 days following the end of the quarter, and at any time promptly upon the request of a Commission representative, computed based upon separating buy sides and sell sides, in a format as determined by the Commission:

(A) For each contract available to be traded through the foreign board of trade's trading system;

(*1*) The total trade volume originating from electronic trading devices providing direct access;

(*2*) The total trade volume for such contracts traded through the trading system worldwide;

(*3*) The total trade volume for such contracts traded on the foreign board of trade generally; and

(B) A listing of the names, National Futures Association identification numbers (if applicable), and main business addresses in the United States of all members and other participants that have direct access.

(ii) The foreign board of trade will promptly provide to the Commission written notice of the following:

(A) Any material change to the information provided in the foreign board of trade's registration application.

(B) Any material change in the rules of the foreign board of trade or clearing organization or the laws, rules, or regulations in the home country jurisdictions of the foreign board of trade or clearing organization relevant to futures, option or swap contracts made available by direct access.

(C) Any matter known to the foreign board of trade, the clearing organization or its representatives that, in the judgment of the foreign board of trade or clearing organization, may affect the financial or operational viability of the foreign board of trade or its clearing organization with respect to contracts traded by direct access, including, but not limited to, any significant system failure or interruption.

(D) Any default, insolvency, or bankruptcy of any foreign board of trade member or other participant that is or should be known to the foreign board of trade or its representatives or the clearing organization or its representatives that may have a material, adverse impact upon the condition of the foreign board of trade as it relates to trading by direct access, its clearing organization or upon any United States customer or firm or any default, insolvency or bankruptcy of any member of the foreign board of trade's clearing organization.

(E) Any violation of any specified conditions of the foreign board of trade's registration or failure to satisfy the requirements for registration under this part that is known or should be known by the foreign board of trade, the

clearing organization or any of their respective members or participants.

(F) Any disciplinary action by the foreign board of trade or its clearing organization, or any regulatory authority that governs their respective activities, taken against any of their respective members or participants with respect to any contract available to be traded by direct access that involves any market manipulation, abuse, fraud, deceit, or conversion or that results in suspension or expulsion.

(iii) The foreign board of trade and the clearing organization, or their respective regulatory authorities, as applicable, will provide the following to the Commission annually as of June 30 and not later than July 31.

(A) A certification from the foreign board of trade's regulatory authority confirming that the foreign board of trade retains its authorization, licensure or registration, as applicable, as a regulated market and/or exchange under the authorization, licensing, recognition or other registration methodology used by the foreign board of trade's regulatory authority and that the foreign board of trade is in continued good standing.

(B) If the clearing organization is not a derivatives clearing organization registered with the Commission, a certification from the clearing organization's regulatory authority confirming that the clearing organization retains its authorization, licensure or registration, as applicable, as a clearing organization under the authorization, licensing or other registration methodology used by the clearing organization's regulatory authority and is in continued good standing.

(C) If the clearing organization is not a derivatives clearing organization registered with the Commission, a recertification of the clearing organization's observance of the Recommendations for Central Counterparties.

(D) A certification that affiliates, as defined in § 48.2(k), continue to be required to comply with the rules of the foreign board of trade and clearing organization and that the members or other participants to which they are affiliated remain responsible to the foreign board of trade for ensuring their affiliates' compliance.

(E) A description of any material changes regarding the foreign board of trade or clearing organization that have not been previously disclosed, in writing, to the Commission, or a certification that no such material changes have occurred.

(F) A description of any significant disciplinary or enforcement actions that have been instituted by or against the foreign board of trade or the clearing organization or the senior officers of either during the prior year.

(G) A written description of any material changes to the regulatory regime to which the foreign board of trade or the clearing organization are subject that have not been previously disclosed, in writing, to the Commission, or a certification that no material changes have occurred.

(2) The above-referenced annual reports must be signed by an officer of the foreign board of trade or the clearing organization who maintains the authority to bind the foreign board of trade or clearing organization, as applicable, and must be based on the officer's personal knowledge.

(c) Additional Specified Conditions for Foreign Boards of Trade with Linked Contacts. If a registered foreign board of trade grants members or other participants direct access and makes available for trading a linked contract, the following additional conditions apply:

(1) Statutory Conditions.

(i) The foreign board of trade will make public daily trading information regarding the linked contract that is comparable to the daily trading information published by the registered entity for the contract to which the foreign board of trade's contract is linked, and

(ii) The foreign board of trade (or its regulatory authority) will:

(A) Adopt position limits (including related hedge exemption provisions) applicable to all market participants for the linked contract that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the contract to which it is linked;

(B) Have the authority to require or direct any market participant to limit, reduce, or liquidate any position the foreign board of trade (or its regulatory authority) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a of the Act, price distortion, or disruption of delivery on the cash settlement process;

(C) Agree to promptly notify the Commission, with regard to the linked contract, of any change regarding—

(*1*) The information that the foreign board of trade will make publicly available,

(*2*) The position limits that foreign board of trade or its regulatory authority will adopt and enforce,

(*3*) The position reductions required to prevent manipulation, excessive speculation as described in section 4a of the Act, price distortion, or disruption of delivery or the cash settlement process, and

(*4*) Any other area of interest expressed by the Commission to the foreign board of trade or its regulatory authority;

(D) Provide information to the Commission regarding large trader positions in the linked contract that is comparable to the large trader position information collected by the Commission for the contract to which it is linked; and

(E) Provide the Commission such information as is necessary to publish reports on aggregate trader positions for the linked contract that are comparable to such reports on aggregate trader positions for the contract to which it is linked.

(2) Other Conditions on Linked Contracts.

(i) The foreign board of trade will inform the Commission in a quarterly report of any member that had positions in a linked contract above the applicable foreign board of trade position limit, whether a hedge exemption was granted, and if not, whether a disciplinary action was taken.

(ii) The foreign board of trade will provide the Commission, either directly or through its agent, with trade execution and audit trail data for the Commission's Trade Surveillance System on a trade-date plus one basis and in a form, content and manner acceptable to the Commission for all linked contracts.

(iii) The foreign board of trade will provide to the Commission, at least one day prior to the effective date thereof, except in the event of an emergency market situation, copies of, or hyperlinks to, all rules, rule amendments, circulars and other notices published by the foreign board of trade with respect to all linked contracts.

(iv) The foreign board of trade will provide to the Commission copies of all reports of disciplinary action involving the foreign board of trade's linked contracts upon closure of the action. Such reports should include the reason the action was undertaken, the results of the investigation that led to the disciplinary action, and any sanctions imposed.

(v) In the event that the Commission, pursuant to its emergency powers authority, directs that the registered entity which lists the contract to which the foreign board of trade's contract is linked to take emergency action with respect to a linked contract (for example, to cease trading in the contract), the foreign board of trade, subject to information-sharing

arrangements between the Commission and its regulatory authority, will promptly take similar action with respect to the its linked contract.

§ 48.9 Revocation of registration.

(a) Failure to Satisfy Registration Requirements or Conditions:

(1) If the Commission determines that a registered foreign board of trade or the clearing organization has failed to satisfy any registration requirements or conditions for registration, the Commission shall notify the foreign board of trade of such determination, including the particular requirements or conditions that are not being satisfied, and shall afford the foreign board of trade or clearing organization an opportunity to make appropriate changes to bring it into compliance.

(2) If, not later than 30 days after receiving a notification under paragraph (a)(1) of this section, the foreign board of trade or clearing organization fails to make changes that, in the opinion of the Commission, are necessary to comply with the registration requirements or conditions of registration, the Commission may revoke the foreign board of trade's registration, after appropriate notice and an opportunity to respond, by issuing an Order Revoking Registration which sets forth the reasons therefor.

(3) A foreign board of trade whose registration has been revoked for failure to satisfy a registration requirement or condition of registration may apply for re-registration 360 days after the issuance of the Order Revoking Registration if the deficiency causing the revocation has been cured or relevant facts and circumstances have changed.

(b) Other Events that Could Result in Revocation. Notwithstanding § 48.9(a), revocation under these circumstances will be handled by the Commission as relevant facts or circumstances warrant.

(1) The Commission may revoke a foreign board of trade's registration, after appropriate notice and an opportunity to respond, if the Commission determines that a representation made in the foreign board of trade's application for registration is found to be untrue or materially misleading or if the foreign board of trade failed to include information in the application that would have been material to the Commission's determination as to whether to issue an Order of Registration.

(2) The Commission may revoke a foreign board of trade's registration, after appropriate notice and an opportunity to respond, if there is a material change in the regulatory regime applicable to the foreign board of trade or clearing organization such that the regulatory regime no longer satisfies any registration requirement or condition for registration applicable to the regulatory regime.

(3) The Commission may revoke a foreign board of trade's registration in the event of an emergency or in a circumstance where the Commission determines that revocation would be necessary or appropriate in the public interest. Following revocation, the Commission will provide notice and an opportunity to respond.

(4) The Commission may revoke a foreign board of trade's registration in the event the foreign board of trade or the clearing organization is no longer authorized, licensed or registered, as applicable, as a regulated market and/or exchange or clearing organization or ceases to operate as a foreign board of trade or clearing organization, subject to notice and an opportunity to respond.

(c) Upon request by the Commission, a registered foreign board of trade must file with the Commission a written demonstration, containing such supporting data, information, and documents, in such form and manner and within such timeframe as the Commission may specify, that the foreign board of trade or clearing organization is in compliance with the registration requirements and/or conditions for registration.

§ 48.10 Additional contracts.

(a) *Generally.* A registered foreign board of trade that wishes to make an additional futures, option or swap contract available for trading by identified members or other participants located in the United States with direct access to its electronic trading and order matching system must submit a written request prior to offering the contracts from within the United States. Such a written request must include the terms and conditions of the additional futures, option or swap contracts and a certification that the additional contracts meet the requirements of § 48.8(c), if applicable, and that the foreign board of trade and the clearing organization continue to satisfy the requirements and conditions of registration. The foreign board of trade can make available for trading by direct access the additional contracts ten business days after the date of receipt by the Commission of the written request, unless the Commission notifies the foreign board of trade that additional time is needed to complete its review of policy or other issues pertinent to the additional contracts. A registered foreign board of trade may list for trading by direct access an additional futures or option contract on a non-narrow-based security index pursuant to the Commission certification procedures set forth in § 30.13(d) and Appendix D to Part 30 of this chapter.

(b) *Option contracts on previously approved futures contracts.* (1) If the option is on a futures contract that is not a linked contract, the option contract may be made available for trading by direct access by filing with the Commission no later than the business day preceding the initial listing of the contract:

(i) A copy of the terms and conditions of the additional contract and

(ii) A certification that the foreign board of trade and the clearing organization continue to satisfy the conditions of its registration.

(2) If the option is on a futures contract that is a linked contract, the option contract may be made available for trading by direct access by filing with the Commission no later than the business day preceding the initial listing of the contract:

(i) A copy of the terms and conditions of the additional contract; and

(ii) A certification that the foreign board of trade and the clearing organization continue to satisfy the conditions of its registration, including the conditions specifically applicable to linked contracts set forth in § 48.8(c).

(3) If the option is on a non-narrow-based security index futures contract which may be offered or sold in the United States pursuant to a Commission certification issued pursuant to § 30.13 of this chapter, the option contract may be listed for trading by direct access without further action by either the registered foreign board of trade or the Commission.

Appendix to Part 48—Form FBOT

COMMODITY FUTURES TRADING COMMISSION

FORM FBOT

FOREIGN BOARD OF TRADE APPLICATION FOR REGISTRATION (IN ORDER TO PERMIT DIRECT ACCESS TO MEMBERS AND OTHER PARTICIPANTS)

APPLICATION INSTRUCTIONS

DEFINITIONS

1. Unless the context requires otherwise, all terms used in this application have the same meaning as in the Commodity Exchange Act, as

amended (CEA or Act),[1] and in the regulations of the Commodity Futures Trading Commission (Commission or CFTC).[2]

2. For the purposes of this Form FBOT, the term ''applicant'' refers to the foreign board of trade applying for registration pursuant to CEA section 4(b) and part 48 of the Commission's regulations. The term ''clearing organization'' refers to the clearing organization that will be clearing trades executed on the trading system of such foreign board of trade.

GENERAL INSTRUCTIONS

1. A Form FBOT (including exhibits) shall be completed by any foreign board of trade applying for registration with the Commission pursuant to CEA section 4(b) and part 48 of the Commission's regulations.

2. Form FBOT (including exhibits and any supplement thereto) (collectively, the ''application'' or ''application for registration'') must be filed electronically with the Secretary of the Commission at *FBOTapplications@cftc.gov.* Applicants may prepare their own Form FBOT, but must follow the format prescribed herein.

3. The name of any individual listed in Form FBOT shall be provided in full (Last Name, First Name and Middle Name or Initial).

4. Form FBOT must be signed by the Chief Executive Officer (or the functional equivalent) of the foreign board of trade who must possess the authority to bind the foreign board of trade.

5. If this Form FBOT is being filed as a new application for registration, all applicable items on the Form FBOT must be answered in full. Non-applicable items should be indicated by marking ''none'' or ''N/A.''

6. Submission of a complete Form FBOT (including all information, documentation and exhibits requested therein, and any required supplement) is mandatory and must be received by the Commission before it will begin to process a foreign board of trade's application for registration. The information provided with a Form FBOT (including exhibits and any supplement thereto) will be used to determine whether the Commission should approve or deny registration to an applicant. Pursuant to its regulations, the Commission may determine that information and/or documentation in addition to that requested in the Form FBOT is required from the applicant in order to process the application for registration or to determine whether registration is appropriate.

7. Pursuant to Commission regulations, an applicant or its clearing organization must identify with particularity any information in the application (including, but not limited to, any information contained in this Form FBOT) that will be the subject of a request for confidential treatment and must provide support for any request for confidential treatment pursuant to the procedures set forth in Commission regulation 145.9.[3] Except in cases where confidential treatment is granted by the Commission pursuant to the Freedom of Information Act and Commission regulations, information supplied in the Form FBOT (including exhibits and any supplement thereto) will be included routinely in the public files of the Commission and will be available for inspection and comment by any interested person.

8. A Form FBOT that is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing.[4] Acceptance of a Form FBOT by the Commission, however, shall not constitute a finding that the Form FBOT has been filed as required or that the information submitted is verified to be true, current, or complete. The Commission may revoke a foreign board of trade's registration, after appropriate notice and an opportunity to respond, if the Commission determines that a representation made in this Form FBOT is found to be untrue or materially misleading or if the foreign board of trade failed to include information in this Form FBOT that would have been material to the Commission's determination as to whether to issue an Order of Registration.

9. In addition to this Form FBOT, the clearing organization associated with the foreign board of trade must complete and submit Supplement S–1 to this Form FBOT in accordance with the instructions thereto. To the extent a single document or description is responsive to more than one request for the same information in either the Form FBOT or the Supplement S–1, the document or description need only be provided once and may be cross-referenced elsewhere.

10. All documents submitted as part of this Form FBOT (or exhibits thereto) must be written in English or accompanied by a certified English translation.

UPDATING INFORMATION ON THE FORM FBOT

Pursuant to the Commission's regulations, if any information or documentation contained in this Form FBOT (including exhibits or any supplement or amendment thereto) is or becomes inaccurate for any reason prior to the issuance of an Order of Registration, an amendment correcting such information must be filed promptly with the Commission. A registered foreign board of trade also may submit an amendment to this Form FBOT to correct information that has become inaccurate subsequent to the receipt of an Order of Registration.

BILLING CODE 6351–01–P

[1] 7 U.S.C. 1 et seq.

[2] 17 CFR chapter I.

[3] 17 CFR 145.9.

[4] Applicants and their clearing organizations are encouraged to correspond with the Commission's Division of Market Oversight regarding any content, procedural, or formatting questions encountered in connection with the preparation of a Form FBOT, or any exhibits or supplements thereto, prior to formally submitting those documents to the Commission. When appropriate, potential applicants and clearing organizations, as applicable, may provide a complete draft Form FBOT (including exhibits and any required supplement) to the Division of Market Oversight for early review to minimize the risk of having a submission returned or otherwise denied as not acceptable for filing. Review of draft submissions by any division of the Commission and any comments provided by a division of the Commission are for consultation purposes only and do not bind the Commission. To obtain instructions for submitting drafts, please contact the Division of Market Oversight.

COMMODITY FUTURES TRADING COMMISSION

FORM FBOT

FOREIGN BOARD OF TRADE APPLICATION FOR REGISTRATION (IN ORDER TO PERMIT DIRECT ACCESS TO MEMBERS AND OTHER PARTICIPANTS)

_____

Name of applicant as specified in organizational documents

_____

Address of principal executive office

☐ If this Form FBOT is a new application for registration, complete in full and check here.

☐ If this Form FBOT is an amendment to a pending application or to a final application that resulted in the issuance of an Order of Registration, list and/or describe all items that are amended or otherwise updated and check here.

When appropriate, please attach additional page(s) containing a list and explanatory statement of amendment(s) or update(s).

GENERAL INFORMATION

1. Name under which the business of the foreign board of trade will be conducted, if different than name specified above:

_____

2. List of principal office(s) where foreign board of trade activities are/will be conducted (please use multiple entries, when applicable):

Office (name and/or location): _____

Address: _____

_____

_____

Phone Number: _____

Fax Number: _____

Website Address: _____

3. Contact Information.

3a. Primary Contact for Form FBOT (i.e., the person authorized to receive Commission correspondence in connection with this Form FBOT and to whom questions regarding the submission should be directed):

Name: _____

Title: _____

Email Address: _____

Mailing Address: _____

_____

_____

Phone Number: _____

Fax Number: _____

3b. If different than above, primary contact at the foreign board of trade that is authorized to receive all forms of Commission correspondence:

Name: _____

Title: _____

Email Address: _____

Mailing Address: _____

_____

_____

Phone Number: _____

Fax Number: _____

BUSINESS ORGANIZATION

Describe organizational history, including date and, if applicable, location of filing of original organizational documentation, and describe all substantial amendments or changes thereto. For example:

[Foreign Board of Trade] is a [corporation, partnership, limited liability company, or other applicable organizational designation], having filed its [articles of incorporation, certificate of formation, articles of organization, other applicable organizational formation document] with the [applicable regulatory body] in [city, state/province, country] on [applicable date].

SIGNATURES

By signing and submitting this Form FBOT, the applicant agrees to and consents that the notice of any proceeding before the Commission in connection with the foreign board of trade's application for registration or registration with the Commission may be given by sending such notice by certified mail or similar secured correspondence to the persons specified in sections 3a and 3b above.

_____ [Name of the Foreign Board of Trade] has duly caused this Form FBOT to be signed on its behalf by the undersigned, hereunto duly authorized, this _____ [Number] day of _____ [Month], _____ [Year]. _____ [Name of the Foreign Board of Trade] and the undersigned represent that all information and representations contained herein are true, current, and complete. It is understood that all information, documentation, and exhibits are considered integral parts of this Form FBOT. The submission of any amendment to Form FBOT represents that all items and exhibits not so amended remain true, current, and complete as previously filed.

_____

Signature of Chief Executive Officer (or functional equivalent), on behalf of the Foreign Board of Trade

_____

Title

_____

Name of Foreign Board of Trade

BILLING CODE 6351–01–C

INSTRUCTIONS FOR EXHIBITS TO FORM FBOT

1. The following exhibits must be filed with the Commission by any foreign board of trade (1) seeking registration for purposes of granting direct access to its members and other participants or (2) amending a

previously submitted application, pursuant to CEA section 4(b) and part 48 of the Commission's regulations. The information and documentation requested relates to the activities of the foreign board of trade, unless otherwise stated.

2. The exhibits should be filed in accordance with the General Instructions to this Form FBOT and labeled as specified herein. If any exhibit is not applicable, please specify the exhibit letter and number and indicate by marking ''none'' or ''N/A.'' If any exhibit may be satisfied by documentation or information submitted in a different exhibit, the documentation or information need not be submitted more than once—please use internal cross-references where appropriate.

GENERAL REQUIREMENTS

A foreign board of trade applying for registration must submit sufficient information and documentation to successfully demonstrate to Commission staff that the foreign board of trade and its clearing organization satisfy all of the requirements of Commission regulation 48.7. With respect to its review of the foreign board of trade, the Commission anticipates that such information and documentation would necessarily include, but not be limited to, the following:

EXHIBIT A—GENERAL INFORMATION AND DOCUMENTATION

Attach, as **Exhibit A–1,** a description of the following for the foreign board of trade: Location, history, size, ownership and corporate structure, governance and committee structure, current or anticipated presence of offices or staff in the United States, and anticipated volume of business emanating from members and other participants that will be provided direct access to the foreign board of trade's trading system.

Attach, as **Exhibit A–2,** the following:

Articles of association, constitution, or other similar organizational documents.

Attach, as **Exhibit A–3,** the following:

(1) Membership and trading participant agreements.

(2) Clearing agreements.

Attach, as **Exhibit A–4,** the following:

Terms and conditions of contracts to be available through direct access (as specified in Exhibit E).

Attach, as **Exhibit A–5,** the following:

The national statutes, laws and regulations governing the activities of the foreign board of trade and its respective participants.

Attach, as **Exhibit A–6,** the following:

The current rules, regulations, guidelines and bylaws of the foreign board of trade.

Attach, as **Exhibit A–7,** the following:

Evidence of the authorization, licensure or registration of the foreign board of trade pursuant to the regulatory regime in its home country jurisdiction and a representation by its regulator(s) that it is in good regulatory standing in the capacity in which it is authorized, licensed or registered.

Attach, as **Exhibit A–8,** the following document:

A summary of any disciplinary or enforcement actions or proceedings that have been brought against the foreign board of trade, or any of the senior officers thereof, in the past five years and the resolution of those actions or proceedings.

Attach, as **Exhibit A–9,** the following document:

An undertaking by the chief executive officer(s) (or functional equivalent[s]) of the foreign board of trade to notify Commission staff promptly if any of the representations made in connection with or related to the foreign board of trade's application for registration cease to be true or correct, or become incomplete or misleading.

EXHIBIT B—MEMBERSHIP CRITERIA

Attach, as **Exhibit B,** the following, separately labeling each description:

(1) A description of the categories of membership and participation in the foreign board of trade and the access and trading privileges provided by the foreign board of trade. The description should include any restrictions applicable to members and other participants to which the foreign board of trade intends to grant direct access to its trading system.

(2) A description of all requirements for each category of membership and participation on the trading system and the manner in which members and other participants are required to demonstrate their compliance with these requirements. The description should include, but not be limited to, the following:

(i) Professional Qualification. A description of the specific professional requirements, qualifications, and/or competencies required of members or other participants and/or their staff and a description of the process by which the foreign board of trade confirms compliance with such requirements.

(ii) Authorization, Licensure and Registration. A description of any regulatory and self-regulatory authorization, licensure or registration requirements that the foreign board of trade imposes upon, or enforces against, its members and other participants including, but not limited to any authorization, licensure or registration requirements imposed by the regulatory regime/authority in the home country jurisdiction(s) of the foreign board of trade. Please also include a description of the process by which the foreign board of trade confirms compliance with such requirements.

(iii) Financial Integrity. A description of the following:

(A) The financial resource requirements, standards, guides or thresholds required of members and other participants.

(B) The manner in which the foreign board of trade evaluates the financial resources/holdings of its members or participants.

(C) The process by which applicants demonstrate compliance with financial requirements for membership or participation including, as applicable:

(*i*) Working capital and collateral requirements, and

(*ii*) Risk management mechanisms for members allowing customers to place orders.

(iv) Fit and Proper Standards. A description of how the foreign board of trade ensures that potential members/other participants meet fit and proper standards.

EXHIBIT C—BOARD AND/OR COMMITTEE MEMBERSHIP

Attach, as **Exhibit C,** the following:

(1) A description of the requirements applicable to membership on the governing board and significant committees of the foreign board of trade.

(2) A description of the process by which the foreign board of trade ensures that potential governing board and committee members/other participants meet these standards.

(3) A description of the provisions to minimize and resolve conflicts of interest with respect to membership on the governing board and significant committees of the foreign board of trade.

(4) A description of the rules with respect to the disclosure of material non-public information obtained as a result of a member's or other participant's performance on the governing board or significant committee.

EXHIBIT D—THE AUTOMATED TRADING SYSTEM

Attach, as **Exhibit D–1,** a description of (or where appropriate, documentation addressing) the following, separately labeling each description:

(1) The order matching/trade execution system, including a complete

description of all permitted ways in which members or other participants (or their customers) may connect to the trade matching/execution system and the related requirements (for example, authorization agreements).

(2) The architecture of the systems, including hardware and distribution network, as well as any pre- and post-trade risk-management controls that are made available to system users.

(3) The security features of the systems.

(4) The length of time such systems have been operating.

(5) Any significant system failures or interruptions.

(6) The nature of any technical review of the order matching/trade execution system performed by the foreign board of trade, the home country regulator, or a third party.

(7) Trading hours.

(8) Types and duration of orders accepted.

(9) Information that must be included on orders.

(10) Trade confirmation and error trade procedures.

(11) Anonymity of participants.

(12) Trading system connectivity with clearing system.

(13) Response time.

(14) Ability to determine depth of market.

(15) Market continuity provisions.

(16) Reporting and recordkeeping requirements.

Attach, as **Exhibit D–2,** a description of the manner in which the foreign board of trade assures the following with respect to the trading system, separately labeling each description:

(1) Algorithm. The trade matching algorithm matches trades fairly and timely.

(2) IOSCO Principles. The trading system complies with the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commissions (IOSCO Principles). Provide a copy of any independent certification received or self-certification performed and identify any system deficiencies with respect to the IOSCO Principles.

(3) Audit Trail.

(i) The audit trail timely captures all relevant data, including changes to orders.

(ii) Audit trail data is securely maintained and available for an adequate time period.

(4) Public Data. Adequate and appropriate trade data is available to users and the public.

(5) Reliability. The trading system has demonstrated reliability.

(6) Secure Access. Access to the trading system is secure and protected.

(7) Emergency Provisions. There are adequate provisions for emergency operations and disaster recovery.

(8) Data Loss Prevention. Trading data is backed up to prevent loss of data.

(9) Contracts Available. Mechanisms are available to ensure that only those futures, option or swap contracts that have been identified to the Commission as part of the application or permitted to be made available for trading by direct access pursuant to the procedures set forth in § 48.10 are made available for trading by direct access.

(10) Predominance of the Centralized Market. Mechanisms are available that ensure a competitive, open, and efficient market and mechanism for executing transactions.

EXHIBIT E—THE TERMS AND CONDITIONS OF CONTRACTS PROPOSED TO BE MADE AVAILABLE IN THE UNITED STATES

Attach, as **Exhibit E–1,** a description of the terms and conditions of futures, option or swap contracts intended to be made available for direct access. With respect to each contract, indicate whether the contract is regulated or otherwise treated as a futures, option or swap contract in the regulatory regime(s) of the foreign board of trade's home country.

As **Exhibit E–2,** demonstrate that the contracts are not prohibited from being traded by United States persons, *i.e.,* the contracts are not prohibited security futures or single stock contracts or narrow-based index contracts. For non-narrow based stock index futures contracts, demonstrate that the contracts have received Commission certification pursuant to the procedures set forth in § 30.13 and Appendix D to part 30 of this chapter.

As **Exhibit E–3,** demonstrate that the contracts are required to be cleared.

As **Exhibit E–4,** identify any contracts that are linked to a contract listed for trading on a United States-registered entity, as defined in section 1a(40) of the Act. A linked contract is a contract that settles against any price (including the daily or final settlement price) of one or more contracts listed for trading on such registered entity.

As **Exhibit E–5,** identify any contracts that have any other relationship with a contract listed for trading on a registered entity, *i.e.,* both the foreign board of trade's and the registered entity's contract settle to the price of the same third party-constructed index.

As **Exhibit E–6,** demonstrate that the contracts are not readily susceptible to manipulation. In addition, for each contract to be listed, describe each investigation, action, proceeding or case involving manipulation and involving such contract in the three years preceding the application date, whether initiated by the foreign board of trade, a regulatory or self-regulatory authority or agency or other government or prosecutorial agency. For each such action, proceeding or case, describe the alleged manipulative activity and the current status or resolution thereof.

EXHIBIT F—THE REGULATORY REGIME GOVERNING THE FOREIGN BOARD OF TRADE IN ITS HOME COUNTRY [5] OR COUNTRIES

With respect to each relevant regulatory regime or authority governing the foreign board of trade, attach, as **Exhibit F,** the following (including, where appropriate, an indication as to whether the applicable regulatory regime is dependent on the home country's classification of the product being traded on the foreign board of trade as a future, option, swap, or otherwise, and a description of any difference between the applicable regulatory regime for each product classification type):

(1) A description of the regulatory regime/authority's structure, resources, staff, and scope of authority; the regulatory regime/authority's authorizing statutes, including the source of its authority to supervise the foreign board of trade; the rules and policy statements issued by the regulator with respect to the authorization and continuing oversight of markets, electronic trading systems, and clearing organizations; and the financial protections afforded customer funds.

(2) A description of and, where applicable, copies of the laws, rules, regulations and policies applicable to: [6]

[5] Where multiple foreign boards of trade subject to the same regulatory regime/authority and are similarly regulated are applying for registration *at the same time,* a single Exhibit E–1 may be submitted as part of the application for all such foreign boards of trade either by one of the applicant foreign boards of trade or by the regulatory regime/authority with responsibility to oversee each of the multiple foreign boards of trade applying for registration. Where an FBOT applying for registration is located in the same jurisdiction and subject to the same regulatory regime as a registered FBOT, the FBOT applying for registration may include by reference, as part of its application, information about the regulatory regime that is posted on the Commission's Web site. The FBOT applying for registration must certify that the information thus included in the application is directly applicable to it and remains current and valid.

[6] To the extent that any such laws, rules, regulations or policies were provided as part of Exhibit A–5, they need not be duplicated. They may be cross-referenced.

(i) The authorization, licensure or registration of the foreign board of trade.

(ii) The regulatory regime/authority's program for the ongoing supervision and oversight of the foreign board of trade and the enforcement of its trading rules.

(iii) The financial resource requirements applicable to the authorization, licensure or registration of the foreign board of trade and the continued operations thereof.

(iv) The extent to which the IOSCO Principles are used or applied by the regulatory regime/authority in its supervision and oversight of the foreign board of trade or are incorporated into its rules and regulations and the extent to which the regulatory regime/authority reviews the applicable trading systems for compliance therewith.

(v) The extent to which the regulatory regime/authority reviews and/or approves the trading rules of the foreign board of trade prior to their implementation.

(vi) The extent to which the regulatory regime/authority reviews and/or approves futures, option or swap contracts prior to their being listed for trading.

(vii) The regulatory regime/authority's approach to the detection and deterrence of abusive trading practices, market manipulation, and other unfair trading practices or disruptions of the market.

(3) A description of the laws, rules, regulations and policies that govern the authorization and ongoing supervision and oversight of market intermediaries who may deal with members and other participants located in the United States participants, including:

(i) Recordkeeping requirements.

(ii) The protection of customer funds.

(iii) Procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.

(4) A description of the regulatory regime/authority's inspection, investigation and surveillance powers; and the program pursuant to which the regulatory regime/authority uses those powers to inspect, investigate, and enforce rules applicable to the foreign board of trade.

(5) For both the foreign board of trade and the clearing organization (unless addressed in Supplement S–1), a report confirming that the foreign board of trade and clearing organization are in regulatory good standing, which report should be prepared subsequent to consulting with the regulatory regime/authority governing the activities of the foreign board of trade and any associated clearing organization. The report should include:

(i) Confirmation of regulatory status (including proper authorization, licensure and registration) of the foreign board of trade and clearing organization.

(ii) Any recent oversight reports generated by the regulatory regime/authority that are, in the judgment of the regulatory regime/authority, relevant to the foreign board of trade's status as a registered foreign board of trade.

(iii) Disclosure of any significant regulatory concerns, inquiries or investigations by the regulatory regime/authority, including any concerns, inquiries or investigations with regard to the foreign board of trade's arrangements to monitor trading by members or other participants located in the United States or the adequacy of the risk management controls of the trading or of the clearing system.

(iv) A description of any investigations (formal or informal) or disciplinary actions initiated by the regulatory regime/authority or any other self-regulatory, regulatory or governmental entity against the foreign board of trade, the clearing organization or any of their respective senior officers during the past year.

(6) For both the foreign board of trade and the clearing organization (unless addressed in Supplement S–1), a confirmation that the regulatory regime/authority governing the activities of the foreign board of trade and the clearing organization agree to cooperate with a Commission staff visit subsequent to submission of the application on an ''as needed basis,'' the objectives of which will be to, among other things, familiarize Commission staff with supervisory staff of the regulatory regime/authority; discuss the laws, rules and regulations that formed the basis of the application and any changes thereto; discuss the cooperation and coordination between the authorities, including, without limitation, information sharing arrangements; and discuss issues of concern as they may develop from time to time (for example, linked contracts or unusual trading that may be of concern to Commission surveillance staff).

EXHIBIT G—THE RULES OF THE FOREIGN BOARD OF TRADE AND ENFORCEMENT THEREOF

Attach, as **Exhibit G–1,** the following:

A description of the foreign board of trade's regulatory or compliance department, including its size, experience level, competencies, duties and responsibilities.

Attach, as **Exhibit G–2,** the following:

A description of the foreign board of trade's trade practice rules, including but not limited to rules that address the following—

(1) Capacity of the foreign board of trade to detect, investigate, and sanction persons who violate foreign board of trade rules.

(2) Prohibition of fraud and abuse, as well as abusive trading practices including, but not limited to, wash sales and trading ahead, and other market abuses.

(3) A trade surveillance system appropriate to the foreign board of trade and capable of detecting and investigating potential trade practice violations.

(4) An audit trail that captures and retains sufficient order and trade-related data to allow the compliance staff to detect trading and market abuses and to reconstruct all transactions within a reasonable period of time.

(5) Appropriate resources to conduct real-time supervision of trading.

(6) Sufficient compliance staff and resources, including those outsourced or delegated to third parties, to fulfill regulatory responsibilities.

(7) Rules that authorize compliance staff to obtain, from market participants, information and cooperation necessary to conduct effective rule enforcement and investigations.

(8) Staff investigations and investigation reports demonstrating that the compliance staff investigates suspected rule violations and prepares reports of their finding and recommendations.

(9) Rules determining access requirements with respect to the persons that may trade on the foreign board of trade, and the means by which they connect to it.

(10) The requirement that market participants submit to the foreign board of trade's jurisdiction as a condition of access to the market.

Attach, as **Exhibit G–3,** the following:

A description of the foreign board of trade's disciplinary rules, including but not limited to rules that address the following—

(1) Disciplinary authority and procedures that empower staff to recommend and prosecute disciplinary actions for suspected rule violations and that provide the authority to fine, suspend, or expel any market participant pursuant to fair and clear standards.

(2) The issuance of warning letters and/or summary fines for specified rule violations.

(3) The review of investigation reports by a disciplinary panel or other authority for issuance of charges or

instructions to investigate further, or findings that an insufficient basis exists to issue charges.

(4) Disciplinary committees of the foreign board of trade that take disciplinary action via formal disciplinary processes.

(5) Whether and how the foreign board of trade articulates its rationale for disciplinary decisions.

(6) The sanctions for particular violations and a discussion of the adequacy of sanctions with respect to the violations committed and their effectiveness as a deterrent to future violations.

Attach, as **Exhibit G–4,** the following:

A description of the market surveillance program (and any related rules), addressing the following—

The dedicated market surveillance department or the delegation or outsourcing of that function, including a general description of the staff; the data collected on traders' market activity; data collected to determine whether prices are responding to supply and demand; data on the size and ownership of deliverable supplies; a description of the manner in which the foreign board of trade detects and deters market manipulation; for cash-settled contracts, methods of monitoring the settlement price or value; and any foreign board of trade position limit, position management, large trader or other position reporting system.

EXHIBIT H—INFORMATION SHARING AGREEMENTS AMONG THE COMMISSION, THE FOREIGN BOARD OF TRADE, THE CLEARING ORGANIZATION, AND RELEVANT REGULATORY AUTHORITIES

Attach, as **Exhibit H,** the following:

(1) A description of the arrangements among the Commission, the foreign board of trade, the clearing organization, and the relevant foreign regulatory authorities that govern the sharing of information regarding the transactions that will be executed pursuant to the foreign board of trade's registration with the Commission and the clearing and settlement of those transactions. This description should address or identify whether and how the foreign board of trade, clearing organization, and the regulatory authorities governing the activities of the foreign board of trade and clearing organization agree to provide directly to the Commission information and documentation requested by Commission staff that Commission staff determines is needed:

(i) To evaluate the continued eligibility of the foreign board of trade for registration.

(ii) To enforce compliance with the specified conditions of the registration.

(iii) To enable the CFTC to carry out its duties under the Act and Commission regulations and to provide adequate protection to the public or registered entities.

(iv) To respond to potential market abuse associated with trading by direct access on the registered foreign board of trade.

(v) To enable Commission staff to effectively accomplish its surveillance responsibilities with respect to a registered entity where Commission staff, in its discretion, determines that a contract traded on a registered foreign board of trade may affect such ability.

(2) A statement as to whether and how the foreign board of trade has executed the International Information Sharing Memorandum of Understanding and Agreement.

(3) A statement as to whether the regulatory authorities governing the activities of the foreign board of trade and clearing organization are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding. If not, describe any substitute information-sharing arrangements that are in place.

(4) A statement as to whether the regulatory authorities governing the activities of the foreign board of trade and clearing organization are signatories to the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations. If not, a statement as to whether and how they have committed to share the types of information contemplated by the International Information Sharing Memorandum of Understanding and Agreement with the Commission, whether pursuant to an existing memorandum of understanding or some other arrangement.

EXHIBIT I—ADDITIONAL INFORMATION AND DOCUMENTATION

Attach, as **Exhibit I**, any additional information or documentation necessary to demonstrate that the requirements for registration applicable to the foreign board of trade set forth in Commission regulation 48.7 are satisfied.

Continuation of Appendix to Part 48—Supplement S–1 to Form FBOT

COMMODITY FUTURES TRADING COMMISSION

SUPPLEMENT S–1 to FORM FBOT

CLEARING ORGANIZATION SUPPLEMENT TO FOREIGN BOARD OF TRADE APPLICATION FOR REGISTRATION

SUPPLEMENT INSTRUCTIONS

DEFINITIONS

1. Unless the context requires otherwise, all terms used in this supplement have the same meaning as in the Commodity Exchange Act, as amended (CEA or Act),[7] and in the regulations of the Commodity Futures Trading Commission (Commission or CFTC).[8]

2. For the purposes of this Supplement S–1, the term ''applicant'' refers to the foreign board of trade applying for registration pursuant to CEA section 4(b) and part 48 of the Commission's regulations. The term ''clearing organization'' refers to the clearing organization that will be clearing trades executed on the trading system of such foreign board of trade.

GENERAL INSTRUCTIONS

1. A Supplement S–1 (including exhibits) shall be completed by each clearing organization that will be clearing trades executed on the trading system of a foreign board of trade applying for registration with the Commission pursuant to CEA section 4(b) and part 48 of the Commission's regulations. Each clearing organization shall submit a separate Supplement S–1.

2. In the event that the clearing functions of the foreign board of trade applying for registration will be performed by the foreign board of trade itself, the foreign board of trade shall complete this Supplement S–1, but need not duplicate information provided on its Form FBOT. Specific reference to or incorporation of information or documentation (including exhibits) on the associated Form FBOT, where appropriate, is acceptable. To the extent a singular document or description is responsive to more than one request for information in this Supplement S–1, the document or description need only be provided once and may be cross-referenced elsewhere.

3. Supplement S–1, including exhibits, should accompany the foreign board of trade's Form FBOT and must

[7] 7 U.S.C. 1 et seq.

[8] 17 CFR chapter I.

be filed electronically with the Secretary of the Commission at *FBOTapplications@cftc.gov.* Clearing organizations may prepare their own Supplement S–1, but must follow the format prescribed herein.

4. The name of any individual listed in Supplement S–1 shall be provided in full (Last Name, First Name and Middle Name or Initial).

5. Supplement S–1 must be signed by the Chief Executive Officer (or the functional equivalent) of the clearing organization who must possess the authority to bind the clearing organization.

6. If this Supplement S–1 is being filed in connection with a new application for registration, all applicable items must be answered in full. If any item is not applicable, indicate by marking ''none'' or ''N/A.''

7. Submission of a complete Form FBOT and Supplement S–1 (including all information, documentation and exhibits requested therein) is mandatory and must be received by the Commission before it will begin to process a foreign board of trade's application for registration. The information provided with a Form FBOT and Supplement S–1 will be used to determine whether the Commission should approve or deny registration to an applicant. Pursuant to its regulations, the Commission may determine that information and/or documentation in addition to that requested in the Form FBOT and Supplement S–1 is required from the applicant and/or its clearing organization(s) in order to process the application for registration or to determine whether registration is appropriate.

8. Pursuant to Commission regulations, an applicant or its clearing organization must identify with particularity any information in the application (including, but not limited to, any information contained in this Supplement S–1), that will be the subject of a request for confidential treatment and must provide support for any request for confidential treatment pursuant to the procedures set forth in Commission regulation 145.9.[9] Except in cases where confidential treatment is granted by the Commission, pursuant to the Freedom of Information Act and Commission regulations, information supplied in the Supplement S–1 will be included routinely in the public files of the Commission and will be available for inspection by any interested person.

9. A Supplement S–1 that is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing.[10] Acceptance of either a Form FBOT or Supplement S–1 by the Commission, however, shall not constitute a finding that the either have been filed as required or that the information submitted is verified to be true, current, or complete. The Commission may revoke a foreign board of trade's registration, after appropriate notice and an opportunity to respond, if the Commission determines that a representation made in this Supplement S–1 is found to be untrue or materially misleading or if the foreign board of trade and/or clearing organization failed to include information in this Supplement S–1 that would have been material to the Commission's determination as to whether to issue an Order of Registration.

10. All documents submitted as part of this Supplement S–1 (or exhibits thereto) must be written in English or accompanied by a certified English translation.

UPDATING INFORMATION

Pursuant to the Commission's regulations, if any information or documentation contained in this Supplement S–1 (including exhibits) is or becomes inaccurate for any reason prior to the issuance of an Order of Registration, an amendment correcting such information must be filed promptly with the Commission. A clearing organization also may submit an amendment to this Supplement S–1 to correct information that has become inaccurate subsequent to the issuance of an Order of Registration.

BILLING CODE 6351–01–P

[9] 17 CFR 145.9.

[10] Applicants and their clearing organizations are encouraged to correspond with the Commission's Division of Market Oversight regarding any content, procedural, or formatting questions encountered in connection with the preparation of a Form FBOT, Supplement S–1, or exhibits thereto prior to formally submitting those documents to the Commission. When appropriate, potential applicants and clearing organizations, as applicable, may provide a complete draft Form FBOT and Supplement S–1 to the Division of Market Oversight for early review to minimize the risk of having a submission returned or otherwise denied as not acceptable for filing. Review of draft submissions by any division of the Commission and any comments provided by a division of the Commission are for consultation purposes only and do not bind the Commission. To obtain instructions for submitting drafts, please contact the Division of Market Oversight.

COMMODITY FUTURES TRADING COMMISSION

SUPPLEMENT S-1 to FORM FBOT

CLEARING ORGANIZATION SUPPLEMENT TO

FOREIGN BOARD OF TRADE APPLICATION FOR REGISTRATION

_____

Name of clearing organization as specified in organizational documents

_____

Address of principal executive office

_____

Name of the foreign board of trade on associated Form FBOT

☐ If this Supplement S-1 is accompanying a new application for registration, please complete in full and check here.

☐ If this Supplement S-1 is an amendment to a pending application for registration, or to a final application that resulted in the issuance of an Order of Registration, please list all items that are amended or otherwise updated and check here.

When appropriate, please attach additional page(s) containing a list and explanatory statement of amendment(s) or update(s).

REGISTERED DERIVATIVES CLEARING ORGANIZATIONS

If the clearing organization is registered with the Commission in good standing as a derivatives clearing organization (DCO), please indicate by checking here:

☐ CFTC-registered DCO.

If the clearing organization is registered with the Commission in good standing as a DCO, the clearing organization need not complete the remainder of the Supplement S-1.

GENERAL INFORMATION

1. Name under which the business of the clearing organization will be conducted, if different than name specified above:

_____

2. List of principal office(s) where clearing organization activities are/will be conducted (please use multiple entries, when applicable):

Office (name and/or location): _____

Address: _____

_____

_____

Phone Number: _____

Fax Number: _____

Website Address: _____

3. Contact Information.

3a. Primary Contact for Supplement S-1 (i.e., the person authorized to receive Commission correspondence in connection with this Supplement S-1 and to whom questions regarding the submission should be directed):

Name: _____

Title: _____

Email Address: _____

Mailing Address: _____

_____

_____

Phone Number: _____

Fax Number: _____

3b. If different than above, primary contact at the clearing organization that is authorized to receive all forms of Commission correspondence:

Name: _____

Title: _____

Email Address: _____

Mailing Address: _____

_____

_____

Phone Number: _____

Fax Number: _____

BUSINESS ORGANIZATION

Describe organization history, including date and, if applicable, location of filing of original organizational documentation, and describe all substantial amendments or changes thereto. For example:

[Clearing organization] is a [corporation, partnership, limited liability company, or other applicable organizational designation], having filed its [articles of incorporation, certificate of formation, articles of organization, other applicable organizational formation document] with the [applicable regulatory body] in [city, state/province, country] on [applicable date].

SIGNATURES

By signing and submitting this Supplement S-1, the clearing organization agrees to and consents that the notice of any proceeding before the Commission in connection with the associated foreign board of trade's application for registration or registration with the Commission may be given by sending such notice by certified mail or similar secured correspondence to the persons specified in sections 3a and 3b above.

_____ [Name of the Clearing Organization] has duly caused this Supplement S-1 to be signed on its behalf by the undersigned, hereunto duly authorized, this _____ [Number] day of _____ [Month], _____ [Year].

_____ [Name of the Clearing Organization] and the undersigned represent that all information and representations contained in this Supplement S-1 (and exhibits) are true, current, and complete. It is understood that all information, documentation, and exhibits are considered integral parts of this Supplement S-1. The submission of any amendment to a Supplement S-1 represents that all items and exhibits not so amended remain true, current, and complete as previously filed.

_____

Signature of Chief Executive Officer (or functional equivalent), on behalf of the Clearing Organization

_____

Title

_____

Name of Clearing Organization

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INSTRUCTIONS FOR EXHIBITS TO SUPPLEMENT S–1

1. The following exhibits must be filed with the Commission by the clearing organization(s) that will be clearing trades executed on the trading system of a foreign board of trade applying for registration with the Commission pursuant to CEA section 4(b) and part 48 of Commission's regulations. The information and documentation requested relates to the activities of the clearing organization.

2. The exhibits should be filed in accordance with the General Instructions to this Supplement S–1 and labeled as specified herein. If any exhibit is not applicable, please specify the exhibit letter and number and indicate by marking ''none'' or ''N/A.'' If any exhibit may be satisfied by documentation or information submitted in a different exhibit, the documentation or information need not be submitted more than once—please use internal cross-references where appropriate.

GENERAL REQUIREMENTS

A foreign board of trade applying for registration must submit sufficient information and documentation to successfully demonstrate to Commission staff that the foreign board of trade and its clearing organization satisfy all of the requirements of Commission regulation 48.7. With respect to its review of the foreign board of trade's clearing organization, the Commission anticipates that such information and documentation would necessarily include, but not be limited to, the following:

EXHIBIT A—GENERAL INFORMATION AND DOCUMENTATION

Attach, as **Exhibit A–1,** a description of the following for the clearing organization:

Location, history, size, ownership and corporate structure, governance and committee structure, and current or anticipated presence of staff in the United States.

Attach, as **Exhibit A–2,** the following:

Articles of association, constitution, or other similar organizational documents.

Attach, as **Exhibit A–3,** the following:

(1) Membership and participation agreements.

(2) Clearing agreements.

Attach, as **Exhibit A–4,** the following:

The national statutes, laws and regulations governing the activities of the clearing organization and its members.

Attach, as **Exhibit A–5,** the following:

The current rules, regulations, guidelines and bylaws of the clearing organization.

Attach, as **Exhibit A–6,** the following:

Evidence of the authorization, licensure or registration of the clearing organization pursuant to the regulatory regime in its home country jurisdiction(s) and a representation by its regulator(s) that it is in good regulatory standing in the capacity in which it is authorized, licensed or registered.

Attach, as **Exhibit A–7,** the following document:

A summary of any disciplinary or enforcement actions or proceedings that have been brought against the clearing organization, or any of the senior officers thereof, in the past five years and the resolution of those actions or proceedings.

Attach, as **Exhibit A–8,** the following document:

An undertaking by the chief executive officer(s) (or functional equivalent[s]) of the clearing organization to notify Commission staff promptly if any of the representations made in connection with this supplement cease to be true or correct, or become incomplete or misleading.

EXHIBIT B—MEMBERSHIP CRITERIA

Attach, as **Exhibit B,** the following, separately labeling each description:

(1) A description of the categories of membership and participation in the clearing organization and the access and clearing privileges provided to each by the clearing organization.

(2) A description of all requirements for each category of membership and participation and the manner in which members and other participants are required to demonstrate their compliance with these requirements. The description should include, but not be limited to, the following:

(i) Professional Qualification. A description of the specific professional requirements, qualifications, and/or competencies required of members or other participants and/or their staff and a description of the process by which the clearing organization confirms compliance with such requirements.

(ii) Authorization, Licensure and Registration. A description of any regulatory or self-regulatory authorization, licensure or registration requirements that the clearing organization imposes upon, or enforces against, its members and other participants including, but not limited to any authorization, licensure or registration requirements imposed by the regulatory regime/authority in the home country jurisdiction(s) of the clearing organization, and a description of the process by which the clearing organization confirms compliance with such requirements.

(iii) Financial Integrity. A description of the following:

(A) The financial resource requirements, standards, guides or thresholds required of members and other participants.

(B) The manner in which the clearing organization evaluates the financial resources/holdings of its members or other participants.

(C) The process by which applicants for clearing membership or participation demonstrate compliance with financial requirements including:

(*1*) Working capital and collateral requirements, and

(*2*) Risk management mechanisms.

(iv) Fit and Proper Standards. A description of any other ways in which the clearing organization ensures that potential members/other participants meet fit and proper standards.

EXHIBIT C—BOARD AND/OR COMMITTEE MEMBERSHIP

Attach, as **Exhibit C,** the following:

(1) A description of the requirements applicable to membership on the governing board and significant committees of the clearing organization.

(2) A description of how the clearing organization ensures that potential governing board and committee members meet these standards.

(3) A description of the clearing organization's provisions to minimize and resolve conflicts of interest with respect to membership on the governing board and significant committees of the clearing organization.

(4) A description of the clearing organization's rules with respect to the disclosure of material non-public information obtained as a result of a member's performance on the governing board or on a significant committee.

EXHIBIT D—SETTLEMENT AND CLEARING

Attach, as **Exhibit D–1,** the following:

A description of the clearing and settlement systems, including, but not limited to, the manner in which such systems interface with the foreign board of trade's trading system and its members and other participants.

Attach, as **Exhibit D–2,** the following:

A certification, signed by the chief executive offer (or functional equivalent) of the clearing organization, that the clearing system observes (1) the current Recommendations for Central Counterparties that have been issued jointly by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions, as updated, revised or otherwise amended, or (2) successor standards, principles and guidance for central counterparties or financial market infrastructures adopted jointly by the Committee on Payment and Settlement Systems or the International Organization of Securities Commissions (RCCPs).

Attach, as **Exhibit D–3,** the following:

A detailed description of the manner in which the clearing organization observes each of the RCCPs or successor standards and documentation supporting the representations made, including any relevant rules or written policies or procedures of the clearing organization. Each RCCP should be addressed separately within the exhibit.

EXHIBIT E—THE REGULATORY REGIME GOVERNING THE CLEARING ORGANIZATION IN ITS HOME COUNTRY OR COUNTRIES

With respect to each relevant regulatory regime or authority governing the clearing organization, attach, as **Exhibit E,** the following:

(1) A description of the regulatory regime/authority's structure, resources, staff and scope of authority.

(2) The regulatory regime/authority's authorizing statutes, including the source of its authority to supervise the clearing organization.

(3) A description of and, where applicable, copies of the laws, rules, regulations and policies applicable to: [11]

(i) The authorization, licensure or registration of the clearing organization.

(ii) The financial resource requirements applicable to the authorization, licensure or registration of the clearing organization and the continued operations thereof.

(iii) The regulatory regime/authority's program for the ongoing supervision and oversight of the clearing organization and the enforcement of its clearing rules.

(iv) The extent to which the current RCCPs are used or applied by the regulatory regime/authority in its supervision and oversight of the clearing organization or are incorporated into its rules and regulations and the extent to which the regulatory regime/authority reviews the clearing systems for compliance therewith.

(v) The extent to which the regulatory regime/authority reviews and/or approves the rules of the clearing organization prior to their implementation.

(vi) The regulatory regime/authority's inspection, investigation and surveillance powers; and the program pursuant to which the regulatory regime/authority uses those powers to inspect, investigate, sanction, and enforce rules applicable to the clearing organization.

(vii) The financial protection afforded customer funds.

EXHIBIT F—THE RULES OF THE CLEARING ORGANIZATION AND ENFORCEMENT THEREOF

Attach, as **Exhibit F–1,** the following:

A description of the clearing organization's regulatory or compliance department, including its size, experience level, competencies, duties and responsibilities of staff.

Attach, as **Exhibit F–2,** the following:

A description of the clearing organization's rules and how they are enforced, with reference to any rules provided as part of Exhibit A–5 that require the clearing organization to comply with one or more of the RCCPs.

Attach, as **Exhibit F–3,** the following, to the extent not included in Exhibit F–2:

A description of the clearing organization's disciplinary rules, including but not limited to rules that address the following—

(1) Disciplinary authority and procedures that empower staff to recommend and prosecute disciplinary actions for suspected rule violations and that provide the authority to fine, suspend, or expel any clearing participant pursuant to fair and clear standards.

(2) The issuance of warning letters and/or summary fines for specified rule violations.

(3) The review of investigation reports by a disciplinary panel or other authority for issuance of charges or instructions to investigate further, or findings that an insufficient basis exists to issue charges.

(4) Disciplinary committees of the clearing organization that take disciplinary action via formal disciplinary processes.

(5) Whether and how the clearing organization articulates its rationale for disciplinary decisions.

(6) The sanctions for particular violations and a discussion of the adequacy of sanctions with respect to the violations committed and their effectiveness as deterrents to future violations.

Attach, as **Exhibit F–4,** the following, to the extent not provided in Exhibit F–2:

A demonstration that the clearing organization is authorized by rule or contractual agreement to obtain, from members and other participants, any information and cooperation necessary to conduct investigations, to effectively enforce its rules, and to ensure compliance with the conditions of registration.

EXHIBIT G—INFORMATION SHARING AGREEMENTS AMONG THE COMMISSION, THE FOREIGN BOARD OF TRADE, THE CLEARING ORGANIZATION, AND RELEVANT REGULATORY AUTHORITIES

Attach, as **Exhibit G,** the following:

(1) A description of the arrangements among the Commission, the foreign board of trade, the clearing organization, and the relevant foreign regulatory authorities that govern the sharing of information regarding the transactions that will be executed pursuant to the foreign board of trade's registration with the Commission and the clearing and settlement of those transactions. This description should address or identify whether and how the foreign board of trade, clearing organization, and the regulatory authorities governing the activities of the foreign board of trade and clearing organization agree to provide directly to the Commission information and documentation requested by Commission staff that Commission staff determines is needed:

(i) To evaluate the continued eligibility of the foreign board of trade for registration.

(ii) To enforce compliance with the specified conditions of the registration.

(iii) To enable the CFTC to carry out its duties under the Act and Commission regulations and to provide adequate protection to the public or registered entities.

(iv) To respond to potential market abuse associated with trading by direct access on the registered foreign board of trade.

(v) To enable Commission staff to effectively accomplish its surveillance responsibilities with respect to a registered entity where Commission staff, in its discretion, determines that a contract traded on a registered foreign board of trade may affect such ability.

(2) A statement as to whether the regulatory authorities governing the activities of the foreign board of trade and clearing organization are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding. If not, describe any substitute information-sharing arrangements that are in place.

(3) A statement as to whether the regulatory authorities governing the activities of the foreign board of trade and clearing organization are signatories to the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations. If not, a statement as to whether and how they have committed to share the types of information contemplated by the International Information Sharing Memorandum of Understanding and Agreement with the Commission, whether pursuant to an existing memorandum of understanding or some other arrangement.

EXHIBIT H—ADDITIONAL INFORMATION AND DOCUMENTATION

Attach, as **EXHIBIT H,** any additional information or documentation necessary to demonstrate that the requirements for registration applicable to the clearing

[11] To the extent that any such laws, rules, regulations or policies were provided as part of Exhibit A–4, they need not be duplicated. They may be cross-referenced.

organization or clearing system set forth in Commission regulation 48.7 are satisfied.

Issued in Washington, DC, December 5, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations

Appendices to Final Rule—Registration of Foreign Boards of Trade—Commission Voting Summary and Statements of Commissioners

Appendix 1—Commission Voting Summary

In this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner noted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rule to implement a registration system for Foreign Boards of Trade (FBOTs) seeking to make futures and swaps contracts directly available to U.S. market participants. This registration system replaces the Commodity Futures Trading Commission's current practice of staff issuing no-action letters to FBOTs to permit them to provide such direct access for futures contracts. Importantly, the registration system will bring consistency, standardization and transparency—both for applicants and the public—to the process. In order to directly access U.S. market participants, the FBOTs and their clearing organizations must be subject to comparable and comprehensive supervision and regulation in their home countries and meet certain standards in the rule.

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