

(i) An issuer must receive full payment of the hybrid instrument's purchase price, and a purchaser or holder of a hybrid instrument may not be required to make additional out-of-pocket payments to the issuer during the life of the instrument or at maturity; and

(ii) The instrument is not marketed as a futures contract or a commodity option, or, except to the extent necessary to describe the functioning of the instrument or to comply with applicable disclosure requirements, as having the characteristics of a futures contract or a commodity option; and

(iii) The instrument does not provide for settlement in the form of a delivery instrument that is specified as such in the rules of a designated contract market;

(4) The instrument is initially issued or sold subject to applicable federal or state securities or banking laws to persons permitted thereunder to purchase or enter into the hybrid instrument.

PART 35—SWAPS IN AN AGRICULTURAL COMMODITY (AGRICULTURAL SWAPS)

AUTHORITY: 7 U.S.C. 2, 6(c), and 6c(b); and title VII, sec. 723(c)(3), Pub. L. 111–203, 124 Stat. 1376, unless otherwise noted.

SOURCE: 76 FR 49299, Aug. 10, 2011, unless otherwise noted.

§ 35.1 Agricultural swaps, generally.

(a) Any person or group of persons may offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to, any transaction in interstate commerce that is a swap in an agricultural commodity subject to all provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap; and

(b) In addition to paragraph (a) of this section, any transaction in interstate commerce that is a swap in an agricultural commodity may be transacted on a swap execution facility, designated contract market, or otherwise in accordance with all provisions of the Act, including any Commission rule, regulation, or order thereunder, appli-

cable to any other swap eligible to be transacted on a swap execution facility, designated contract market, or otherwise.

PART 36—TRADE EXECUTION REQUIREMENT

AUTHORITY: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a–2, and 7b–3, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

SOURCE: 85 FR 82328, Dec. 18, 2020, unless otherwise noted.

§ 36.1 Exemptions to trade execution requirement.

(a) A swap transaction that is executed as a component of a package transaction that also includes a component transaction that is the issuance of a bond in a primary market is exempt from the trade execution requirement in section 2(h)(8) of the Act.

(1) For purposes of paragraph (a) of this section, a package transaction consists of two or more component transactions executed between two or more counterparties where:

(i) At least one component transaction is subject to the trade execution requirement in section 2(h)(8) of the Act;

(ii) Execution of each component transaction is contingent upon the execution of all other component transactions; and

(iii) The component transactions are priced or quoted together as one economic transaction with simultaneous or near-simultaneous execution of all components.

(2) [Reserved]

(b) Section 2(h)(8) of the Act does not apply to a swap transaction that qualifies for the exception under section 2(h)(7) of the Act or an exception or exemption under part 50 of this chapter, and for which the associated requirements are met.

(c) Section 2(h)(8) of the Act does not apply to a swap transaction that is executed between counterparties that have eligible affiliate counterparty status pursuant to § 50.52(a) of this chapter