

person or class of persons offering, entering into, rendering advice or rendering other services with respect to such exempt hybrid instrument is exempt for such activity from all provisions of the Act (except in each case section 2(a)(1)(B)), provided the following terms and conditions are met:

(1) The instrument is:

(i) An equity or debt security within the meaning of section 2(1) of the Securities Act of 1933; or

(ii) A demand deposit, time deposit or transaction account within the meaning of 12 CFR 204.2 (b)(1), (c)(1) and (e), respectively, offered by an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act; an insured credit union as defined in section 101 of the Federal Credit Union Act; or a Federal or State branch or agency of a foreign bank as defined in section 1 of the International Banking Act;

(2) The sum of the commodity-dependent values of the commodity-dependent components is less than the commodity-independent value of the commodity-independent component;

(3) Provided that:

(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 designed 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, applicable 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 even if the eligible affiliate counterparties clear the swap transaction.

[85 FR 82328, Dec. 18, 2020, as amended at 86 FR 9001, Feb. 11, 2021]

## PART 37—SWAP EXECUTION FACILITIES

### Subpart A—General Provisions

- Sec.
- 37.1 Scope.
- 37.2 Applicable provisions.
- 37.3 Requirements and procedures for registration.
- 37.4 Procedures for listing products and implementing rules.
- 37.5 Information relating to swap execution facility compliance.
- 37.6 Enforceability.
- 37.7 Prohibited use of data collected for regulatory purposes.
- 37.8 Boards of trade operating both a designated contract market and a swap execution facility.
- 37.9 Methods of execution for required and permitted transactions.
- 37.10 Process for a swap execution facility to make a swap available to trade.
- 37.11 [Reserved]
- 37.12 Trade execution compliance schedule.

### Subpart B—Compliance with Core Principles

- 37.100 Core Principle 1—Compliance with core principles.

### Subpart C—Compliance with Rules

- 37.200 Core Principle 2—Compliance with rules.
- 37.201 Operation of swap execution facility and compliance with rules.
- 37.202 Access requirements.
- 37.203 Rule enforcement program.
- 37.204 Regulatory services provided by a third party.
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### Subpart D—Swaps Not Readily Susceptible to Manipulation

- 37.300 Core Principle 3—Swaps not readily susceptible to manipulation.
- 37.301 General requirements.

### Subpart E—Monitoring of Trading and Trade Processing

- 37.400 Core Principle 4—Monitoring of trading and trade processing.
- 37.401 General requirements.
- 37.402 Additional requirements for physical-delivery swaps.
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- 37.404 Ability to obtain information.
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### Subpart F—Ability to Obtain Information

- 37.500 Core Principle 5—Ability to obtain information.
- 37.501 Establish and enforce rules.
- 37.502 Collection of information.
- 37.503 Provide information to the Commission.
- 37.504 Information-sharing agreements.

### Subpart G—Position Limits or Accountability

- 37.600 Core Principle 6—Position limits or accountability.
- 37.601 Additional sources for compliance.

### Subpart H—Financial Integrity of Transactions

- 37.700 Core Principle 7—Financial integrity of transactions.
- 37.701 Required clearing.
- 37.702 General financial integrity.
- 37.703 Monitoring for financial soundness.