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CFTC Adopts Final Rule on Registration on Foreign Boards of Trade

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The Commodity Futures Trading Commission has adopted final rules (which are substantially similar to the proposed rules) that replace the existing system of staff-issued no-action letters with a registration system for foreign boards of trade (FBOTs) seeking to provide their members or other participants located in the U.S. with direct access to the FBOT's electronic order entry and trade matching system. The standards and procedures for registration (as well as an appendix containing two application forms—one for the FBOT and one for the clearing organization—and describing the information required to be submitted as part of an application) are set out in a new Part 48 of the CFTC's regulations.

Consistent with current practice, a registered FBOT would be able to grant direct access to: identified members and other participants that trade for their proprietary accounts; future commission merchants that submit orders on behalf of U.S. customers; and commodity pool operators and commodity trading advisors, or entities exempt from registration, that submit orders on behalf of U.S. pools or for accounts of U.S. customers for which they have discretionary authority.

The criteria that FBOTs will need to satisfy in order to become registered include possessing the attributes of an established, organized exchange, adhering to appropriate rules prohibiting abusive trading practices, and enforcing appropriate rules to maintain market and financial integrity. The CFTC will also evaluate whether the FBOT's home regulatory authority oversees the FBOT in a manner that is comparable to the manner in which the CFTC oversees DCMs (specifically, whether the FBOT's regulator supports and enforces regulatory objective that are substantially equivalent to those supported and enforced by the CFTC—e.g., prevention of market manipulation and customer and market abuse).

In addition, an FBOT will be required to satisfy seven general registration categories (the same categories currently used by the CFTC in determining whether to grant no-action relief):

1. Membership criteria;
2. Trading system;
3. Terms and conditions of contracts;
4. Settlement and clearing;
5. Regulatory regime governing the FBOT;
6. The FBOT's and the clearing organization's rules and rule enforcement; and
7. Information sharing.

Upon approval of an FBOT application, the CFTC will issue an Order of Registration to the applicant. Further, the final rules require FBOTs to comply with the applicable conditions of registration set forth in the final rules (e.g., conditions applicable to the listing of swaps and information sharing) and any additional conditions that the CFTC may impose.

The final rules become effective 60 days after publication in the Federal Register. FBOTs that are operating pursuant to existing no-action relief must submit a limited application for registration within 180 days of the effective date of this final rule. A copy of the final rules may be found [here](#).

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