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BILLING CODE [XXXX-XX]

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 48

RIN [XXXX]–[XXXX]

Foreign Boards of Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is proposing to amend part 48 of its regulations to permit a foreign board of trade (FBOT) registered with the Commission to provide direct access to its electronic trading and order matching system to an identified member or other participant located in the United States and registered with the Commission as an introducing broker (IB) for submission of customer orders to the FBOT’s trading system for execution. The Commission is also proposing, in part 48, to establish a procedure for an FBOT to request revocation of its registration, and to remove certain outdated references to “existing no-action relief.”

DATES: Comments must be received on or before April 22, 2024.

ADDRESSES: You may submit comments, identified by “Foreign Boards of Trade” and RIN [XXXX-XXXX], by any of the following methods:

- *CFTC Comments Portal:* <https://comments.cftc.gov>. Select the “Submit Comments” link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.

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- *Hand Delivery/Courier:* Follow the same instruction as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English or, if not, accompanied by an English translation. Comments will be posted as received to <https://comments.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in section 145.9 of the Commission's regulations.¹

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://comments.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of this proposed rule will be retained in the public comment file and will be considered as required under the Administrative Procedure Act (APA) and other applicable laws, and may be accessible under FOIA.

FOR FURTHER INFORMATION CONTACT: Alexandros Stamoulis, Associate Director, Division of Market Oversight, Commodity Futures Trading Commission, (646) 746-9792, astamoulis@cftc.gov, 290 Broadway, 6th Floor, New York, NY 10007; Roger Smith, Associate Chief Counsel, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418-5344, rsmith@cftc.gov, 77 West Jackson Blvd., Suite 800, Chicago, IL 60604; Maura

¹ 17 CFR 145.9. The Commission's regulations referred to in this release are found at 17 CFR Chapter I (2022), available on the Commission's website at <https://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm>.

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SUPPLEMENTARY INFORMATION:

TABLE OF CONTENTS

I. Background

II. The Proposed Amendments

A. Section 48.4 – Registration eligibility and scope

B. Section 48.8 – Conditions of registration

C. Section 48.9 – Revocation of registration

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

III. Related Matters

A. Regulatory Flexibility Act

B. Paperwork Reduction Act

C. Cost Benefit Considerations

IV. Text of the Proposed Regulations

I. Background

Under part 48 of the Commission’s regulations, an FBOT must be registered with the Commission in order to provide its members or other participants located in the United States with direct access to its electronic trading and order matching system.² Part 48 is authorized by

² See Registration of Foreign Boards of Trade, Final Rule, 76 FR 80674 (Dec. 23, 2011); 17 CFR Part 48. “Direct access” is defined as “an explicit grant of authority by a foreign board of trade to an identified member or other

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section 738 of the Dodd-Frank Act, which amended section 4(b) of the Commodity Exchange Act (CEA), to provide that the Commission may adopt rules and regulations requiring FBOTs that wish to provide U.S. persons with direct access to register with the Commission.³ Prior to enactment of the part 48 FBOT registration procedures in 2011, FBOTs relied on no-action letters that were requested by the FBOT and granted by Commission staff in order to provide direct access to U.S. persons.⁴

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 trade matching system. The regulations 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.

The Commission has not amended part 48 since it was first promulgated in 2011. Based on the Commission's experience engaging with registered FBOTs and applying part 48 over the ensuing years, the Commission is proposing certain amendments to the regulation. The proposed amendments are limited in scope and would not change the overall registration structure or framework of part 48. Rather, the proposal would amend § 48.4 to broaden the types of intermediaries eligible for direct access for submission of customer orders to the FBOT to

participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade." CEA § 4(b)(1)(A), 7 USC § 6(b)(1)(A); 17 CFR 48.2(c).

³ See Sec. 738, Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 1726-1728 (2010) (*codified at* 7 USC § 6(b)).

⁴ See 76 FR 80674 at 80674-80675.

Pre-Print Version – Commission approved

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include IBs registered with the Commission as such and located in the United States.⁵ An IB is generally defined as an individual or organization that solicits or accepts orders to buy or sell futures contracts, commodity options, retail off-exchange forex or commodity contracts, or swaps, but does not accept money or other assets from customers to support these orders.⁶

Currently, § 48.4 only includes certain futures commission merchants (FCMs), commodity pool operators (CPOs), and commodity trading advisors (CTAs) as intermediaries that are eligible for entering orders on behalf of customers or commodity pools (in the case of CPOs) via direct access on a registered FBOT.

In addition, the proposed amendments would amend § 48.9 to provide registered FBOTs with a procedure to request revocation of their FBOT registration. Further, the Commission proposes to delete § 48.6, which provides for an alternate registration procedure for FBOT's acting under the preexisting staff no-action letter process, because such no-action letter process and no-action letters are no longer in effect.

⁵ Intermediaries are entities that act on behalf of another person with respect to a trade. They are generally required to register with the Commission and, depending on the nature of their activities, may be subject to various financial, disclosure, reporting, and recordkeeping requirements.

⁶ IB is defined, subject to certain exclusions and additions, in CEA Section 1a(31) as any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant) (i) who (I) is engaged in soliciting or in accepting orders for (aa) the purchase or sale of any commodity for future delivery, security futures product, or swap; (bb) any agreement, contract, or transaction described in Section 2(c)(2)(C)(i) or Section 2(c)(2)(D)(i); (cc) any commodity option authorized under Section 4c; or (dd) any leverage transaction authorized under Section 19; and (II) does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or (ii) who is registered with the Commission as an IB. 7 U.S.C. 1a(31). IB is further defined, subject to certain exclusions and additions, in Commission regulation 1.3(mm) as (1) Any person who, for compensation or profit, whether direct or indirect: (i) Is engaged in soliciting or in accepting orders (other than in a clerical capacity) for the purchase or sale of any commodity for future delivery, security futures product, or swap; any agreement, contract or transaction described in Section 2(c)(2)(C)(i) or Section 2(c)(2)(D)(i) of the CEA; any commodity option transaction authorized under Section 4c; or any leverage transaction authorized under Section 19; or who is registered with the Commission as an IB; and (ii) Does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. 17 CFR 1.3(mm). IBs are subject to registration with the Commission under CEA Section 4d(g) and Commission regulation 3.4(a). 7 U.S.C. 6d(g) and 17 CFR 3.4(a).

Pre-Print Version – Commission approved

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II. Proposed Amendments

A. Section 48.4 – Registration eligibility and scope

The Commission proposes to amend § 48.4(b) to permit FBOTs to provide direct access to eligible IBs to enter orders directly into an FBOT’s trading and order matching system on behalf of U.S. customers.⁷ Section 48.4(b) identifies the types of members or other participants located in the U.S. that may enter orders directly into the trading and order matching system of a registered FBOT, and the types of accounts for which orders may be submitted by such members or other participants. In this regard, the types of members or other participants currently identified in § 48.4(b) represent the types of members or other participants that were trading via direct access on FBOTs that operated in reliance on CFTC staff no-action letters at the time part 48 was promulgated.⁸ Specifically, § 48.4(b)(1) provides that any member or other participant located in the U.S. may enter orders for their proprietary accounts.⁹ Further, § 48.4(b)(2) provides that registered FCMs may submit orders on behalf of their customers. Section 48.4(b)(3) permits certain CPOs to submit orders on behalf of U.S. commodity pools and certain CTAs to submit orders on behalf of U.S. customers provided, however, all trades by the CPO or CTA effected through submission of such orders are guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10.¹⁰ The Commission proposes to amend §

⁷ The term “eligible IB” is used in this release to mean an IB that is located in the United States and registered with the Commission as an IB. Direct access, as defined in the CEA and part 48, refers explicitly to members or other participants of an FBOT that are located in the United States. *See* footnote 2, *supra*. For purposes of this rulemaking and as used herein, the terms “U.S. customer” and “United States customer” refer to customers located in the United States, its territories or its possessions.

⁸ *See* footnote 14, *infra*, and accompanying text.

⁹ Under § 48.2(l), member or other participant is defined as “a member or other participant of a[n] [FBOT] and any affiliate thereof that has been granted direct access by the [FBOT].” 17 CFR 48.2(l). Proprietary account is defined in § 1.3, 17 CFR 1.3.

¹⁰ A § 30.10 exemptive order permits firms subject to regulation by a foreign regulator to conduct business from locations outside of the U.S. for U.S. persons on FBOTs without registering as FCMs, based upon the firm’s

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

48.4(b), by inserting a new paragraph (4) to provide that eligible IBs may submit orders on behalf of their customers – subject to the same condition now in place for CPOs and CTAs submitting orders on behalf of U.S. commodity pools or U.S. customers: all trades effected through submission of U.S. customer orders must be guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10. The Commission also proposes to amend paragraph (3) to insert the words “registered as such” following “futures commission merchant” to clarify that the reference is limited to FCMs registered with the Commission as such.¹¹

Direct access is defined in the CEA and part 48 of the Commission’s 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 engine of the FBOT.¹² This means that the FBOT itself, as opposed to 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 United States.¹³ For example, a registered FBOT may authorize its member firms or other participants eligible to handle U.S. customer orders to enter orders on behalf of their customers in the U.S. or to otherwise permit their customers in the U.S. to access the trading system using the member firm’s or participant’s identifier and grant of authority. In such cases the FBOT permits an identified exchange member or other participant to allow their

substituted compliance with a foreign regulatory structure found comparable to that administered by the Commission under the CEA. Used herein, U.S. commodity pool refers to a commodity pool that does not meet the criteria set forth in § 3.10(c)(5)(iii)(A)-(F), 17 CFR 3.10(c)(5)(iii)(A)-(F).

¹¹ The proposed addition of the words “registered as such” here is intended as a technical change rather than a substantive change; *i.e.*, that the reference is intended to refer to registered FCMs is already implied by the subsequent clause “or a firm exempt from such registration...”

¹² CEA § 4(b)(1)(A), 7 USC § 6(b)(1)(A); 17 CFR 48.2(c).

¹³ Conversely, a person located in the U.S. who accesses an FBOT through an intermediary (whether such intermediary is located in the United States or not) and without an explicit grant of authority by the FBOT (*i.e.*, such person is not an identified member or other participant of the FBOT) would not meet the definition of “direct access” for purposes of part 48. *See, e.g.*, 76 FR 80674 at 80688.

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

customers in the U.S., who have not been granted explicit authority by the FBOT as a member or other participant of the FBOT, to have access to the exchange’s trading systems, subject to a guarantee from an exchange participant firm. The proposed amendment to § 48.4(b) would permit registered FBOTs to grant explicit authority to eligible IBs to act in such capacity, provided that all trades effected by the IB through submission of U.S. customer orders are guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10.

In promulgating § 48.4(b) the Commission set forth criteria based on then-existing staff no-action letters for FBOTs, noting that “persons that would be permitted by the FBOT to trade by direct access from the U.S. pursuant to the registration rules would be the types of persons that are currently able to trade by direct access pursuant to staff issued no-action relief letters.”¹⁴ However, the referenced staff no-action letters did not include any provision for IBs. In the proposing release for part 48, the Commission requested comments concerning additional entities that should be eligible for direct access to the trading and order matching systems of FBOTs from the U.S.¹⁵ At that time, no comments were received in response to that request and the Commission adopted § 48.4(b) as proposed and without direct comment.

The Commission believes that permitting eligible IBs to submit customer orders via direct access to FBOTs may be beneficial to market participants and affected markets.

¹⁴ Registration of Foreign Boards of Trade, Notice of Proposed Rulemaking, 88 FR 61432, 70977 (Nov. 19, 2010). *See also*, Q & A – Final Rule on Registration of Foreign Boards of Trade, What entities will be eligible to trade via direct access from the U.S.?, *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/fbot_qa_final.pdf (“[t]he registration regulations identify the types of entities to which a registered FBOT could grant direct access: identified members and other participants that trade for their proprietary accounts; FCMs that submit orders on behalf of U.S. customers; and CPOs or CTAs, or entities exempt from such registration, that submit orders on behalf of U.S. pools or for accounts of U.S. customers for which they have discretionary authority. This is consistent with the existing no-action relief.”); *and* Fact Sheet, Final Rules Regarding the Registration of Foreign Boards of Trade, *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/fbot_factsheet_final.pdf.

¹⁵ 88 FR 61432 at 70977.

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

Designated contract markets (DCMs) may provide for IBs to act as executing brokers for customer accounts that in turn use FCM clearing members to whom executed trades are given up for clearing and through which such customer accounts are carried, typically in an omnibus customer account or a fully disclosed basis. FBOTs may similarly permit IBs located outside of the United States to enter trades directly into the trade matching system of the FBOT on behalf of their customer accounts. The proposed amendment to § 48.4 would permit registered IBs located in the U.S. to act in a comparable capacity on registered FBOTs in cases where an FBOT will be providing direct access to the IB for the purpose of submitting customer orders for execution. The Commission preliminarily believes that allowing eligible IBs to have direct access to registered FBOTs to execute transactions on behalf of their clients may provide market participants that wish to trade in foreign futures contracts with greater choice in brokers and broker arrangements, and may increase competition among firms offering execution brokerage services to customers on registered FBOTs. The Commission furthermore preliminarily believes that affording greater choice in brokers and broker arrangements would not undermine or otherwise adversely affect customer protections available to U.S. customers as their trades would be guaranteed by a registered FCM or firm exempt from FCM registration under § 30.10,¹⁶ and

¹⁶ Including the proposed provision relating to the guarantee of U.S. customer trades in proposed new § 48.4(b)(4) would ensure that U.S. customer trades executed by eligible IBs via direct access are guaranteed by a firm that is registered as an FCM or exempt from FCM registration under § 30.10. In so doing, the proposed rule would act to reinforce adherence with part 30, insofar as part 30 generally requires intermediaries holding funds of U.S. customers in connection with the offer or sale of foreign futures and options contracts to be registered as FCMs or exempt from FCM registration under § 30.10. Part 30 of the Commission's regulations governs the offer and sale of foreign futures and options contracts to customers located in the United States. These regulations are designed to carry out Congress's intent that foreign futures and foreign options products offered or sold in the U.S. be subject to regulatory safeguards comparable to those applicable to domestic transactions. Section 30.4 of the Commission's regulations requires that in order to accept any money, securities or property (or extend credit in lieu thereof) to margin, guarantee or secure transactions conducted by U.S. persons on an FBOT, a person must be registered as an FCM. *See* 17 CFR 30.4(a). The Commission may grant and has granted exemptions to this requirement to register as an FCM based on petitions filed pursuant to 17 CFR 30.10. *See* footnote 10, *supra*.

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

would be subject to required risk disclosures relating to foreign futures transactions.¹⁷

REQUEST FOR COMMENT

The Commission requests comments on all aspects of the proposal to amend § 48.4(b) to permit registered FBOTs to provide direct access to eligible IBs to enter orders directly into the FBOT’s trading and order matching system on behalf of customers, provided that all trades effected through submission of U.S. customer orders are guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10. In particular, the Commission requests comment on the following questions.

(1) Would extending direct access eligibility to eligible IBs for the purpose of submitting customer orders potentially result in any unintended consequences? Is there any reason the Commission should not amend § 48.4 to extend direct access eligibility to eligible IBs for the purpose of submitting customer orders? Are there other issues the Commission should address in order to ensure that FBOTs providing direct access to IBs under proposed § 48.4(b)(4) does not harm U.S. markets or increase risk to the U.S. economy?

(2) The proposed regulation would require that an FCM registered with the Commission as such or a firm exempt from such registration pursuant to § 30.10 act as a clearing firm and guarantee, without limitation, all trades of the IB effected through submission of orders for U.S. customers to the trading system.

(a) Is this condition appropriate? Why or why not?

¹⁷ Section 30.6 of the Commission’s regulations requires FCMs and IBs to provide a statement to customers disclosing the risks of trading foreign futures and options outside the United States. 17 CFR 30.6. This requirement also applies to exempt foreign IBs, CPOs, and CTAs. 17 CFR 30.5(c). Petitions for exemptive relief under § 30.10 for firms seeking an exemption from FCM registration must demonstrate that such firms are subject to a comparable regulatory program that includes, among other elements, minimum sales practice standards, including “disclosure of the risks of futures and options transactions and, in particular, the risk of transactions undertaken outside the jurisdiction of domestic law.” 17 CFR Part 30, Appendix A, Sales Practice Standards.

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

(b) Does “act as a clearing firm and guarantee, without limitation, all trades of the introducing broker” effectively translate to and encapsulate the various comparable foreign regimes and market structures of FBOTs and their clearing organizations? Are there relevant considerations relating to the clearing and guarantee of IB trades that differ from that of CPO and CTA trades?

(c) How could this condition impact trades submitted by an IB on behalf of a self-clearing firm? Do direct clearing members of FBOT clearing organizations use IBs to submit their orders to FBOTs? If so, does this proposed condition raise any operational issues, additional costs, or other issues for such direct clearing members (*e.g.*, relating to portfolio margining, risk management, or other)?

(3) Should the Commission instead require all U.S. customer trades entered by an IB via direct access on a registered FBOT to be guaranteed by a registered FCM (but not extend the condition to firms exempt from FCM registration under § 30.10 to carry such trades)? Would permitting firms exempt from FCM registration under § 30.10 to carry U.S. customer trades entered by an IB via direct access on a registered FBOT raise any issues with anti-money laundering (AML) requirements under the Bank Secrecy Act and Commission regulations? What would be the effects of requiring such trades to be carried exclusively by clearing members that are registered with the Commission as FCMs?

(4) Are there additional registration requirements under § 48.7 that the Commission should consider for FBOTs that provide direct access to IBs under proposed § 48.4(b)(4)?

(5) In addition to the information that FBOTs provide to the Commission on an ongoing basis under § 48.8, is there additional information that the Commission should receive from FBOTs that provide direct access to IBs under proposed § 48.4(b)(4), and if so, why? For

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example, is there additional information that FBOTs could provide to assist the Commission in identifying, evaluating, and addressing situations that may adversely impact consumers, IBs, market participants, and financial markets? Further, please describe whether this information should be provided on a periodic basis (*i.e.*, quarterly or monthly), or event-driven basis (*i.e.*, after a disciplinary action).

B. Section 48.8 – Conditions of registration

The Commission is proposing conforming amendments that will include eligible IBs in §§ 48.8(a)(4)(ii), 48.8(a)(5)(i) and 48.8(a)(5)(iii) alongside FCMs, CPOs and CTAs.

Section 48.8(a)(4)(ii) requires all orders transmitted via direct access and pursuant to an FBOT's registration to be for a member's or other participant's proprietary trading account unless transmitted by a registered FCM, CPO or CTA (or exempt CPO or CTA). The Commission proposes to include IBs in this subsection along with FCMs, CPOs and CTAs, to conform with the proposed changes to § 48.4(b) that would allow eligible IBs to transmit orders via direct access on behalf of the accounts of their customers. The Commission also proposes to add the words "registered as such" following the final reference to "futures commission merchant" in § 48.8(a)(4)(ii) to conform to the proposed amendment to § 48.4(b)(3).¹⁸

Section 48.8(a)(5)(i) provides that a registered FBOT must require each current and prospective member or other participant granted direct access and not registered with the Commission as an FCM, CPO or CTA to agree to and submit to the jurisdiction of the Commission with respect to activities conducted pursuant to the FBOT's registration. Registered FCMs, CPOs and CTAs are excluded from this requirement because they are otherwise subject to the jurisdiction of the Commission as Commission registrants. Registered IBs are likewise

¹⁸ See footnote 11, *supra*, and accompanying text.

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

subject to the jurisdiction of the Commission as registrants and the Commission therefore proposes to include IBs alongside FCMs, CPOs and CTAs in § 48.8(a)(5)(i).

Section 48.8(a)(5)(iii) provides that a registered FBOT, its clearing organization, and each current and prospective member or other participant granted direct access that is not registered with the Commission as an FCM, CPO or CTA must maintain with the FBOT written representations stating that such entity will provide prompt access to books, records, and premises upon the request of the Commission, U.S. Department of Justice and, if appropriate, the National Futures Association (NFA). Registered FCMs, CPOs and CTAs are excluded from this requirement because they are otherwise required to provide such access to books, records, and premises as Commission registrants and, where applicable, NFA members.¹⁹ Registered IBs, as Commission registrants and NFA members, are likewise required to provide such access to books, records, and premises by the Commission, U.S. Department of Justice, and NFA, and the Commission therefore proposes to include IBs alongside FCMs, CPOs and CTAs in § 48.8(a)(5)(iii).

REQUEST FOR COMMENT

The Commission requests comments on the proposed conforming changes to §§ 48.8(a)(4)(ii), 48.8(a)(5)(i) and 48.8(a)(5)(iii).

C. Section 48.9 – Revocation of registration

The Commission proposes to amend § 48.9 to establish a procedure for FBOTs to request voluntary revocation of registration. Section 48.9 addresses certain events which could lead the Commission to revoke an FBOT's registration, including the failure to satisfy registration

¹⁹ Subpart C of part 170 of the Commission's regulations provides for certain exceptions to the general requirement that Commission-registered FCMs and CTAs must become NFA members. *See* 17 CFR 170.15 and 170.17.

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

requirements or conditions, and certain other specified events.²⁰ However, part 48 presently does not contain any provisions for an FBOT to request voluntary revocation of its registration. In order to allow registered FBOTs to more easily ascertain the steps required to request revocation, the Commission proposes to amend § 48.9(b) (“Other Events that Could Result in Revocation”) by adding a new paragraph (b)(5). New § 48.9(b)(5) would clarify that the Commission may revoke an FBOT’s registration in response to a voluntary request by an FBOT to do so, and provide that an FBOT can make such request via email to the Commission.

REQUEST FOR COMMENT

The Commission requests comments on all aspects of the proposed amendment to § 48.9 to establish a procedure for FBOTs to request voluntary revocation of registration.

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

Section 48.6 provides for a limited application procedure for FBOTs that had been operating under existing staff no-action letters and FBOTs that had submitted a complete application for a staff no-action letter that was pending as of the effective date of part 48. Those limited application provisions are no longer applicable because all FBOTs with previously existing staff no-action letters have been registered under part 48 and all such no-action letters have been revoked. Accordingly, the Commission proposes to delete § 48.6. As a conforming amendment the Commission also proposes to delete § 48.2(h) (definition of “existing no-action relief”) as that definition will no longer be applicable or necessary once existing § 48.6 is removed.

REQUEST FOR COMMENT

²⁰ See 17 CFR 48.9.

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

The Commission requests comments on all aspects of the proposal to delete §§ 48.6 and 48.2(h).

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis with respect to such impact.²¹ The Commission has previously established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.²² The proposed amendments to part 48 would impact FBOTs. The Commission has previously determined that FBOTs are not small entities for purposes of the RFA.²³

The proposed amendments to part 48 would also impact eligible IBs by providing them with the potential to gain direct access to FBOTs that incorporate the new regulatory provisions allowing such IBs direct access. The Commission has previously established that IBs may in some cases be deemed “small entities” for the purposes of the RFA.²⁴ However, the proposed rules do not impose any new burden on eligible IBs. Instead, the proposal would remove a regulatory barrier preventing these small entities from accessing FBOTs. Accordingly, the Commission believes that the regulation will be less burdensome to small-entity eligible IBs and will not impose any additional costs on them.

²¹ 5 U.S.C. 601 *et seq.*

²² See Policy Statement and Establishment of “Small Entities” for purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982).

²³ 76 FR at 80698.

²⁴ 85 FR 78718, 78733 (Dec. 7, 2020).

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

Therefore, the Chairman, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), hereby certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA),²⁵ imposes certain requirements on Federal agencies (including the Commission) in connection with conducting or sponsoring any “collection of information,”²⁶ as defined by the PRA. Under 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 from the Office of Management and Budget (OMB).²⁷ The PRA is intended, in part, to minimize the paperwork burden created for individuals, businesses, and other persons as a result of the collection of information by federal agencies, to ensure the greatest possible benefit and utility of information created, collected, maintained, used, shared, and disseminated by or for the Federal Government.²⁸ The PRA applies to all information, “regardless of form or format,” whenever the government is obtaining, causing to be obtained, or soliciting information, and includes required disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical

²⁵ 44 U.S.C. 3501 *et seq.*

²⁶ *See* 44 U.S.C. § 3502(3)(A).

²⁷ *See* 44 U.S.C. 3507(a)(3); 5 CFR 1320.5(a)(3).

²⁸ *See* 44 U.S.C. § 3501.

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.²⁹

This notice of proposed rulemaking (NPRM) proposes amendments to regulations that contain collections of information for which the Commission has previously received a control number from OMB: 3038-0101, Registration of Foreign Boards of Trade (17 CFR Part 48).³⁰ This collection addresses the information collection requirements associated with part 48's registration requirement and related registration procedures and conditions that apply to FBOTs that wish to provide direct access to their electronic trading and order matching systems. The NPRM would provide a process for FBOTs to request voluntary revocation of their registration, allow eligible IBs to act as direct access participants, and remove an outdated reference to "no action relief."

The Commission believes that these proposed amendments do not contain any new collections of information and would not increase the burden associated with the information collections under part 48. While the proposed amendments establish a new process for FBOTs to submit requests for revocation of their registration, the proposed regulations allow FBOTs to submit their requests electronically via email to the Commission and do not mandate any specific form or format for such requests. Accordingly, this new submission method would not constitute a collection of information under the PRA. In addition, the proposed amendments do not affect the provisions of part 48 covered in the current PRA approval (§ 48.8 (periodic data submissions to the Commission), § 48.9 (demonstration of compliance); and § 48.10 (listing additional futures and options contracts)). Accordingly, the Commission is retaining its existing estimates

²⁹ See 44 U.S.C. § 3502(3).

³⁰ The Commission's most recent burden estimates for this collection are available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202301-3038-001.

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

for the burden associated with the information collections under OMB Collection 3038-0101.

The Commission requests public comment on this determination.

C. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA³¹ requires the Commission to “consider the costs and benefits” of its actions before promulgating a regulation under the CEA or issuing certain orders. CEA section 15(a) further specifies that the costs and benefits shall be evaluated 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. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the CEA section 15(a) factors.

The Commission has endeavored to assess the expected costs and benefits of the proposed amendments in quantitative terms, including Paperwork Reduction Act (PRA)-related costs, where practicable. In situations where the Commission is unable to quantify the costs and benefits, the Commission identifies and considers the costs and benefits of the applicable proposed amendments in qualitative terms.

The Commission notes that this consideration of costs and benefits is based on, *inter alia*, its understanding that the derivatives markets regulated by the Commission function internationally, with (1) transactions that involve entities organized in the United States occurring across different international jurisdictions, (2) some entities organized outside of the United States that are prospective Commission registrants, and (3) some entities that typically

³¹ 7 U.S.C. 19(a).

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

operate both within and outside the United States, and that follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of the proposed regulations on all relevant derivatives activity, whether based on their actual occurrence in the United States or on their connection with activities in, or effect on, U.S. commerce.³²

In the following consideration of costs and benefits, the Commission first identifies and discusses the benefits and costs attributable to the proposed rule amendments. The Commission, where applicable, then considers the costs and benefits of the proposed rule amendments in light of the five public interest considerations set out in § 15(a) of the CEA.

2. Proposed Regulations

The Commission is proposing to amend certain rules in part 48 of its regulations relating to FBOTs. The Commission identifies the costs and benefits of the proposed amendments relative to the baseline of the regulatory status quo. In particular, the baseline against which the Commission considers the costs and benefits of these proposed rule amendments is the statutory and regulatory requirements of the CEA and Commission regulations now in effect, in particular CEA section 4(b) and part 48 of the Commission’s regulations.

Proposed amendments to § 48.6

The Commission proposes to delete § 48.6, which provides for an alternate registration procedure for FBOTs acting under the preexisting staff no-action letter process, because such no-action letter process and no-action letters are no longer in effect. Deletion of § 48.6 and elimination of the alternate registration procedure will not increase costs to FBOTs because § 48.6 and the alternate registration procedure are already in effect null.

³² See, e.g., 7 U.S.C. 2(i).

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

Proposed amendments to § 48.9

The Commission proposes to amend § 48.9 to establish a procedure for FBOTs to request voluntary revocation of registration. This amendment would not impose a new requirement for FBOTs. The baseline is the current practice of the Commission, whereby requests for voluntary revocation are processed on an ad-hoc basis. The primary benefit will be to allow registrants to more easily ascertain the steps required to request revocation. The amendments are not expected to increase costs to registered FBOTs compared to the status quo.

Proposed amendments to § 48.4 and conforming amendments to § 48.8

The proposed amendments to § 48.4 and conforming amendments to § 48.8 would permit a registered FBOT to provide direct access to its electronic trading and order matching system to an identified member or other participant located in the U.S. and registered with the Commission as an IB for submission of customer orders to the FBOT's trading system for execution, provided that all trades effected through submission of U.S. customer orders are guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10.

There are presently 24 FBOTs registered with the Commission. Under the current rules, eligible intermediaries permitted direct access on registered FBOTs for purposes of entering trades on behalf of non-proprietary client accounts include certain FCMs, CTAs, and CPOs. The proposed amendments would add eligible IBs to the existing list of eligible intermediaries. Similar to trades submitted by CTAs and CPOs via direct access, the trades executed by eligible IBs on behalf of customers located in the U.S. would be required to be guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10. IBs specialize in soliciting and executing orders for their clients. The field of trade execution is continuously evolving with

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

technological advances, and has helped bring down execution costs. As of January 2024, the following number of CTAs, CPOs, and IBs were registered with the Commission.³³

CTAs*	1,262
CPOs*	1,190
IBs	937
FCMs	60
Swap Dealers	106

* These categories are not mutually exclusive, *i.e.*, a CPO may also be registered as a CTA.

The table above shows that the number of IBs is more than a quarter of all CFTC-registered intermediaries. The Commission does not know how many FBOTs would provide direct access to eligible IBs and how many eligible IBs would become direct access members or participants of registered FBOTs. There could also be new IB entrants that are granted direct access to registered FBOTs. However, by permitting FBOTs to provide direct access to eligible IBs, the proposed amendments could lead to a significant increase in the number of choices for U.S. customers with respect to execution of trades on FBOTs.

Although the Commission lacks the data and information to quantitatively estimate the costs and benefits of permitting IBs located in the U.S. to have direct access to registered FBOTs, it has endeavored to assess the expected costs and benefits of the proposal in qualitative terms. The lack of data and information to estimate costs is attributable in part to uncertainty regarding how FBOTs would choose to respond to the proposed amendments to part 48 and how

³³ NFA website, <https://www.nfa.futures.org/registration-membership/membership-and-directories.html>.

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

IBs located in the U.S. would choose to respond to potential new opportunities to participate on registered FBOTs. The Commission specifically requests data and information from IBs located in the U.S., registered FBOTs, market participants, and other commenters to allow it to better estimate the costs and benefits of the proposal.

The baseline is the status quo in which § 48.4 permits FBOTs to provide direct access to certain FCMs, CPOs and CTAs for purposes of transmission of orders for certain client accounts. Furthermore, foreign IBs not located in the U.S. may have similar arrangements on FBOTs whereby their customer orders are transmitted to an FBOT.³⁴ IBs are not included in § 48.4 as intermediaries eligible to have direct access and transmit trades on behalf of customers. As such, registered FBOTs currently do not provide direct access to IBs located in the United States to enter orders on behalf of their customers.

Relative to the baseline, the primary effect of the proposed amendment to § 48.4 would be to allow registered FBOTs to provide direct access to eligible IBs in order to transmit orders of U.S. customers. This could promote competition among execution-only brokers on registered FBOTs. There may be advantages to customers from having additional choices in brokers and brokerage arrangements to trade foreign futures on registered FBOTs – for example, lower trading costs or the use of advantageous proprietary execution algorithms developed by such IBs.

From the standpoint of registered FBOTs, allowing eligible IBs to become direct access participants would open up potential new distribution channels that could lead to additional trading volume. This in turn could improve the viability of some traded instruments. Similarly,

³⁴ The definition of “direct access” does not include identified members or other participants of an FBOT that are located outside of the United States. *See* 17 CFR 48.2(c).

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

eligible IBs would be able to pursue new business models and/or expand existing business models onto new foreign markets.

FBOTs that decide to provide direct access to eligible IBs and that do not already have necessary structures in place to do so may incur certain costs relating to, for example, modification of rules, procedures and/or systems to enable direct access to eligible IBs to submit customer orders to the FBOT's trading system for execution. The Commission is interested in receiving public comments regarding these and any other costs associated with eligible IBs having direct access to registered FBOTs. In this regard, the Commission requests public comment on any potential costs of the proposal, including comments relating to questions 6 through 9 in the "request for comment" section below.

Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of the amendments to part 48 with respect to the following factors: protection of market participants and the public; efficiency, competitiveness, and financial integrity of markets; price discovery; sound risk management practices; and other public interest considerations.

(i) Protection of Market Participants and the Public

The proposed changes to part 48 would not affect the basic protection for customers with respect to their foreign futures transactions. Under the proposed rule, U.S. customer assets are required to be maintained by registered FCMs or similar entities exempt from FCM registration pursuant to § 30.10.

(ii) Efficiency, Competitiveness, and Financial Integrity of Markets

The current part 48 treats eligible IBs differently from certain FCMs, CTAs and CPOs located in the U.S. in regard to their ability to be granted direct access to registered FBOTs for

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

the purpose of executing third-party client trades. Similarly, intermediaries located outside of the United States may, under the status quo, offer execution services to U.S. and non-U.S. customers on registered FBOTs. The proposed change would permit eligible IBs to offer competing execution services on registered FBOTs. Alternatively, to the extent that clientele for these IBs is distinct from other kinds of intermediaries, the rule change may enable them to access new foreign futures markets. Greater competition among introducing brokers and additional and new types of customers participating in affected markets may lead to increased market efficiencies and greater financial integrity. Furthermore, that trades of U.S. customers must be guaranteed by registered FCMs or comparable foreign firms promotes the financial integrity of affected markets by ensuring that intermediaries handling U.S. customer funds are subject to certain regulatory safeguards.

(iii) Price Discovery

There is a potential for the proposed changes to part 48 to positively affect price discovery in futures markets. Participation of eligible IBs as direct access members may lead to increased participation and volume on registered FBOTs, in particular during hours when U.S. brokers are more active than foreign brokers.

(iv) Risk Management Practices

As noted above, the proposed changes will not affect how customer assets are treated. However, registered FCMs and firms exempt from FCM registration pursuant to § 30.10 may need to expand their risk mitigation processes to ensure that they have robust processes for managing the risk associated with eligible IBs executing trades on registered FBOTs via direct access.

(v) Other Public Interest Considerations

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

As noted above, the proposed changes may enable new and distinct kinds of market participants to access registered FBOTs, which could help improve liquidity and reduce fragmentation in affected markets.

REQUEST FOR COMMENT

The Commission invites public comment on all aspects of its cost benefit considerations, including the discussion of the section 15(a) factors and the identification and assessment of any costs or benefits not discussed herein. Commenters may also suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA and would provide a more appropriate cost-benefit profile. Commenters are requested to provide data and any other information or statistics to support their position. To the extent commenters believe that the costs or benefits of any aspect of the proposed rules are reasonably quantifiable, the Commission requests that they provide data and any other information or statistics to assist the Commission in quantification. In particular, the Commission requests comment on the following questions:

(6) What is the experience of FCMs, CTAs and CPOs regarding the magnitude of benefits to their customers from their direct access participation on FBOTs?

(7) Have there been instances of harm to customers/clients from FCMs, CTAs and/or CPOs participating as direct access members of registered FBOTs?

(8) Would direct access trading by eligible IBs on registered FBOTs pose substantive challenges and/or costs to FCMs or firms exempt from FCM registration under § 30.10 who carry or would carry the accounts of trades executed by such IBs?

(9) Are there additional costs or benefits from the proposed rule change that have not been discussed?

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

IV. Text of the Proposed Regulations

List of Subjects in Part 48

Registration of Foreign Boards of Trade

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR Part 48 as follows:

- 1. The authority citation for part 48 continues to read as follows:

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

- 2. Amend § 48.2 by deleting paragraph (h) and redesignating subsequent paragraphs (i), (j), (k) and (l) as (h), (i), (j) and (k), respectively.
- 3. Amend § 48.4 by revising paragraph (b) to read as follows:

§48.4 Registration eligibility and scope.

* * * * *

(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;
- (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

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

participant has discretionary authority, respectively, provided that a futures commission merchant registered with the Commission as such 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; or

(4) Registered with the Commission as introducing brokers and are submitting customer orders to the trading system for execution, provided that a futures commission merchant registered with the Commission as such or a firm exempt from such registration pursuant to § 30.10 of this chapter acts as a clearing firm and guarantees, without limitation, all trades of the introducing broker effected through submission of orders for United States customers to the trading system.

■ 4. Delete and reserve § 48.6 to read as follows:

§48.6 [Reserved.]

■ 5. Amend § 48.8 by revising paragraphs (a)(4)(ii), (a)(5)(i) and (a)(5)(iii) to read as follows:

§48.8 Conditions of registration.

* * * * *

(a) * * *

(4) * * *

(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 an introducing broker, commodity pool operator or commodity trading advisor, or is exempt

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

from registration as a commodity pool operator or commodity trading advisor pursuant to § 4.13 or § 4.14 of this chapter, provided that a futures commission merchant registered with the Commission as such or a firm exempt from such registration pursuant to § 30.10 of this chapter acts as clearing firm and guarantees, without limitation, all trades of the introducing broker, commodity pool operator or commodity trading advisor effected through submission of orders for United States pools or customers to 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, an introducing broker, 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) * * *

(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, an introducing broker, 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

Pre-Print Version – Commission approved

(subject to technical corrections required for Federal Register publication)

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.

■ 6. Amend § 48.9 by adding new paragraph (b)(5) to read as follows:

§48.9 Revocation of registration.

* * * * *

(b) * * *

(5) The Commission may revoke a foreign board of trade's registration in response to a voluntary request by the foreign board of trade to vacate its registration. A foreign board of trade may file a request to vacate its registration with the Secretary of the Commission at *FBOTapplications@cftc.gov*.