

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),¹ and in the regulations of the Commodity Futures Trading Commission (Commission or CFTC).²
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 Commission 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 Commission 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.
3. Supplement S-1, including exhibits, should accompany the foreign board of trade’s Form FBOT and must 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.

¹ 7 U.S.C. 1 et seq.

² 17 CFR chapter I.

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 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 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.⁴ 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.

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 may also submit an amendment to this supplement to correct information that has become inaccurate subsequent to the issuance of an Order of Registration.

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, 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 Commission’s Division of Market Oversight 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 received 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 Director of 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

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 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.”

GENERAL REQUIREMENTS

A foreign board of trade applying for registration must submit sufficient information and documentation to successfully demonstrate to Commission staff that it 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 and a representation by its respective regulators 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 and 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 authorities 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. The following:

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

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

(C) A description of the process by which applicants for clearing membership or participation demonstrate compliance with financial requirements including:

(i) Working capital and collateral requirements, and

(ii) 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**, 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**, a certification, signed by the chief executive officer (or functional equivalent) of the clearing organization, that the clearing system complies with (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**, a detailed description of the manner in which the clearing organization complies with each of the RCCPs 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

Attach, as **Exhibit E**, with respect to each relevant regulatory regime or authorities, the following:

- (1) A description of the regulatory authority's structure, resources, staff and scope of authority.
- (2) The regulatory authority's authorizing statutes, including the source of its authority to supervise the clearing organization.
- (3) A description of and, where applicable, copies (with, as applicable, English translations) of the laws, rules, regulations and policies applicable to:⁵
 - (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 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 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 authorities review the clearing systems for compliance therewith.
 - (v) The extent to which the regulatory authority reviews and/or approves the rules of the clearing organization prior to their implementation.
 - (vi) The regulatory authority's inspection, investigation and surveillance powers; and the program pursuant to which the regulatory 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**, 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**, 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**, to the extent not included in Exhibit E-2, a description of the clearing organization's disciplinary rules, including but not limited to rules that address the following:

⁵ 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.

- (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**, 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**:

- (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 immediately and 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, and

(v) Where Commission staff, in its discretion, determines that a contract traded on a registered foreign board of trade may affect the Commission's ability to carry out surveillance with respect to a registered entity.

(2) A statement as to whether and how the foreign board of trade has executed, or has committed to execute, 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 alternative 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 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 organization or clearing system set forth in Commission regulation 48.7 are satisfied.⁶

⁶ 17 CFR § 48.7.