

for the board of directors and the Commission, which sets forth the regulatory program's expenses, describes its staffing and structure, catalogues disciplinary actions taken during the year, and reviews the performance of disciplinary committees and panels;

(F) Recommend changes that would ensure fair, vigorous, and effective regulation; and

(G) Review regulatory proposals and advise the board as to whether and how such changes may impact regulation.

(4) *Disciplinary Panels*

All contract markets shall minimize conflicts of interest in their disciplinary processes through disciplinary panel composition rules that preclude any group or class of industry participants from dominating or exercising disproportionate influence on such panels. Contract markets can further minimize conflicts of interest by including in all disciplinary panels at least one person who would qualify as a public director, as defined in Subsections (2)(ii) and (2)(iii) above, except in cases limited to decorum, attire, or the timely submission of accurate records required for clearing or verifying each day's transactions. If contract market rules provide for appeal to the board of directors, or to a committee of the board, then that appellate body shall also include at least one person who would qualify as a public director as defined in Subsections (2)(ii) and (2)(iii) above.

Core Principle 16 of section 5(d) of the Act: *COMPOSITION OF BOARDS OF MUTUALLY OWNED CONTRACT MARKETS—In the case of a mutually owned contract market, the board of trade shall ensure that the composition of the governing board reflects market participants.*

(a) *Application guidance.* The composition of a mutually-owned contract market's governing board should fairly represent the diversity of interests of the contract market's market participants.

(b) *Acceptable practices.* [Reserved]

Core Principle 17 of section 5(d) of the Act: *RECORDKEEPING—The board of trade shall maintain records of all activities related to the business of the contract market in a form and manner acceptable to the Commission for a period of 5 years.*

(a) *Application guidance.* [Reserved]

(b) *Acceptable practices.* Section 1.31 of this chapter governs recordkeeping obligations under the Act and the Commission's regulations thereunder. In order to provide broad flexible performance standards for recordkeeping, §1.31 was updated and amended by the Commission in 1999. Accordingly, §1.31 itself establishes the guidance regarding the form and manner for keeping records.

Core Principle 18 of section 5(d) of the Act: *ANTITRUST CONSIDERATIONS—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall endeavor to avoid—(A) adopting any rules or taking any ac-*

*tions that result in any unreasonable restraints of trade; or (B) imposing any material anti-competitive burden on trading on the contract market.*

(a) *Application guidance.* An entity seeking designation as a contract market may request that the Commission consider under the provisions of section 15(b) of the Act any of the entity's rules, including trading protocols or policies, and including both operational rules and the terms or conditions of products listed for trading, at the time of designation or thereafter. The Commission intends to apply section 15(b) of the Act to its consideration of issues under this core principle in a manner consistent with that previously applied to contract markets.

(b) *Acceptable practices.* [Reserved]

[66 FR 42277, Aug. 10, 2001, as amended at 67 FR 62352, Oct. 7, 2002; 71 FR 1965, 1966, Jan. 12, 2006; 72 FR 6957, Feb. 14, 2007; 72 FR 65658, Nov. 23, 2007; 74 FR 18990, Apr. 27, 2009]

## PART 39—DERIVATIVES CLEARING ORGANIZATIONS

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APPENDIX A TO PART 39—APPLICATION GUIDANCE AND COMPLIANCE WITH CORE PRINCIPLES

AUTHORITY: 7 U.S.C. 7b as amended by appendix E of Pub. L. 106-554, 114 Stat. 2763A-365.

SOURCE: 66 FR 45609, Aug. 29, 2001, unless otherwise noted.

### § 39.1 Scope.

The provisions of this part apply to any derivatives clearing organization as defined under section 1a(9) of the Act which is registered or deemed to be registered with the Commission as a derivatives clearing organization, is required to register as such with the Commission pursuant to section 5b(a) of the Act, or which voluntarily applies to register as such with the Commission pursuant to section 5b(b) or otherwise.