§ 39.5 Information relating to derivatives clearing organization operations.

(a) Upon request by the Commission, a derivatives clearing organization shall file with the Commission such information related to its business as a clearing organization, including information relating to trade and clearing details, in the form and manner and within the time as specified by the Commission in the request.

(b) Upon request by the Commission, a derivatives clearing organization shall file with the Commission a written demonstration, containing such supporting data, information and documents, in the form and manner and within such time as the Commission may specify that the derivatives clearing organization is in compliance with one or more core principles as specified in the request.

(c) Information regarding transactions by large traders cleared by a derivatives clearing organization shall be filed with the Commission, in a form and manner acceptable to the Commission, by futures commission merchants, clearing members, foreign brokers or registered entities other than a derivatives clearing organization, as applicable. Provided, however, that if no such person or entity is required to file large trader information with the Commission, such information must be filed with the Commission by a derivatives clearing organization.

(d) Upon special call by the Commission, each futures commission merchant, clearing member or foreign broker shall provide information to the Commission concerning customer accounts or related positions cleared on a derivatives clearing organization or other multilateral clearing organization in the form and manner and within the time specified by the Commission in the special call.

§ 39.6 Enforceability.

An agreement, contract or transaction submitted to a derivatives clearing organization for clearance shall not be void, voidable, subject to rescission, or otherwise invalidated or rendered unenforceable as a result of:

(a) A violation by the derivatives clearing organization of the provisions
of the Act or of Commission regulations; or
(b) Any Commission proceeding to alter or supplement a rule under section 8a(7) of the Act, to declare an emergency under section 8a(9) of the Act, or any other proceeding the effect of which is to alter, supplement, or require a derivatives clearing organization to adopt a specific rule or procedure, or to take or refrain from taking a specific action.

§ 39.7 Fraud in connection with the clearing of transactions on a derivatives clearing organization.

It shall be unlawful for any person, directly or indirectly, in or in connection with the clearing of transactions by a derivatives clearing organization:
(a) To cheat or defraud or attempt to cheat or defraud any person;
(b) Willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or
(c) Willfully to deceive or attempt to deceive any person by any means whatsoever.

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

This appendix provides guidance concerning the core principles with which applicants must demonstrate the ability to comply and with which registered derivatives clearing organizations must continue to comply to be granted and to maintain registration as a derivatives clearing organization under section 5b of the Act and §§ 39.3 and 39.5 of the Commission's regulations. The guidance for each core principle is illustrative only of the types of matters a clearing organization may address, as applicable, and is not intended to be a mandatory checklist. Addressing the criteria set forth in this appendix would help the Commission in its consideration of whether the clearing organization is in compliance with the core principles, to the extent that compliance with, or satisfaction of, a core principle is not self-explanatory from the face of a clearing organization's rules, an application pursuant to § 39.3 or a submission pursuant to § 39.5 should include an explanation or other form of documentation demonstrating that the clearing organization is able to or does comply with the core principles.

Core Principle A: IN GENERAL—To be registered and to maintain registration as a derivatives clearing organization, an applicant shall demonstrate to the Commission that the applicant complies with the core principles specified in this paragraph. The applicant shall have reasonable discretion in establishing the manner in which it complies with the core principles.

An entity preparing to submit an application to the Commission an application to operate as a derivatives clearing organization is encouraged to contact Commission staff for guidance and assistance in preparing its application. Applicants may submit a draft application for review prior to the submission of an actual application without triggering the application review procedures of § 39.3 of the Commission's regulations. The Commission also may require a derivatives clearing organization to demonstrate to the Commission that it is operating in compliance with one or more core principles.

Core Principle B: FINANCIAL RESOURCES—The applicant shall demonstrate that the applicant has adequate financial, operational, and managerial resources to discharge the responsibilities of a derivatives clearing organization.

In addressing Core Principle B, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. The resources dedicated to supporting the clearing function:
   a. The level of resources available to the clearing organization and the sufficiency of those resources to assure that no material adverse break in clearing operations will occur in a variety of market conditions; and
   b. The level of member/participant default such resources could support as demonstrated through use of hypothetical default scenarios that explain assumptions and variables factored into the illustrations.

2. The nature of resources dedicated to supporting the clearing function:
   a. The type of the resources, including their liquidity, and how they could be accessed and applied by the clearing organization promptly;
   b. How financial and other material information will be updated and reported to members, the public, if and when appropriate, and to the Commission on an ongoing basis; and
   c. Any legal or operational impediments or conditions to access.

Core Principle C: PARTICIPANT AND PRODUCT ELIGIBILITY—The applicant shall establish (i) appropriate admission and continuing eligibility standards (including appropriate minimum financial requirements) for members of and participants in the organization; and (ii) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the applicant.

In addressing Core Principle C, applicants and registered derivatives clearing organizations may describe or otherwise document: