Commodity Futures Trading Commission

§ 39.27 Legal risk considerations.

(a) Legal authorization. A derivatives clearing organization shall be duly organized, legally authorized to conduct business, and remain in good standing at all times in the relevant jurisdictions. If the derivatives clearing organization provides clearing services outside the United States, it shall be duly organized to conduct business and remain in good standing at all times in...
the relevant jurisdictions, and be authorized by the appropriate foreign licensing authority.

(b) Legal framework. A derivatives clearing organization shall operate pursuant to a well-founded, transparent, and enforceable legal framework that addresses each aspect of the activities of the derivatives clearing organization. As applicable, the framework shall provide for:

(1) The derivatives clearing organization to act as a counterparty, including novation;
(2) Netting arrangements;
(3) The derivatives clearing organization’s interest in collateral;
(4) The steps that a derivatives clearing organization would take to address a default of a clearing member, including but not limited to, the unimpeded ability to liquidate collateral and close out or transfer positions in a timely manner;
(5) Finality of settlement and funds transfers that are irrevocable and unconditional when effected (no later than when a derivatives clearing organization’s accounts are debited and credited); and
(6) Other significant aspects of the derivatives clearing organization’s operations, risk management procedures, and related requirements.

(c) Conflict of laws. If a derivatives clearing organization provides clearing services outside the United States:

(1) The derivatives clearing organization shall identify and address any material conflict of law issues. The derivatives clearing organization’s contractual agreements shall specify a choice of law.
(2) The derivatives clearing organization shall be able to demonstrate the enforceability of its choice of law in relevant jurisdictions and that its rules, procedures, and contracts are enforceable in all relevant jurisdictions.