§ 38.801 Additional sources for compliance.

Applicants and designated contract markets may refer to the guidance in appendix B of this part to demonstrate to the Commission compliance with the requirements of §38.800 of this part.

Subpart Q—Conflicts of Interest

SOURCE: 77 FR 36700, June 19, 2012, unless otherwise noted.

§ 38.850 Core Principle 16.

The board of trade shall establish and enforce rules:
(a) To minimize conflicts of interest in the decision-making process of the contract market; and
(b) To establish a process for resolving conflicts of interest described in paragraph (a) of this section.

§ 38.851 Additional sources for compliance.

Applicants and designated contract markets may refer to the guidance and/or acceptable practices in appendix B of this part to demonstrate to the Commission compliance with the requirements of §38.850 of this part.

Subpart R—Composition of Governing Boards of Contract Markets

SOURCE: 77 FR 36700, June 19, 2012, unless otherwise noted.

§ 38.900 Core Principle 17.

The governance arrangements of the board of trade shall be designed to permit consideration of the views of market participants.

Subpart S—Recordkeeping

SOURCE: 77 FR 36700, June 19, 2012, unless otherwise noted.

§ 38.950 Core Principle 18.

The board of trade shall maintain records of all activities relating to the business of the contract market:
(a) In a form and manner that is acceptable to the Commission; and
(b) For a period of at least 5 years.

§ 38.951 Additional sources for compliance.

A designated contract market must maintain such records, including trade records and investigatory and disciplinary files, in accordance with the requirements of §1.31 of this chapter, and in accordance with part 45 of this chapter, if applicable.

Subpart T—Antitrust Considerations

SOURCE: 77 FR 36700, June 19, 2012, unless otherwise noted.

§ 38.1000 Core Principle 19.

Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall not:
(a) Adopt any rule or taking any action that results in any unreasonable restraint of trade; or
(b) Impose any material anticompetitive burden on trading on the contract market.

§ 38.1001 Additional sources for compliance.

Applicants and designated contract markets may refer to the guidance and acceptable practices in appendix B of this part to demonstrate to the Commission compliance with the requirements of §38.1000 of this part.

Subpart U—System Safeguards

SOURCE: 77 FR 36700, June 19, 2012, unless otherwise noted.

§ 38.1050 Core Principle 20.

Each designated contract market shall:
(a) Establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures,
and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

(b) Establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the board of trade; and

(c) Periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, transmission of matched orders to a designated clearing organization for clearing, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

§ 38.1051 General requirements.

(a) A designated contract market’s program of risk analysis and oversight with respect to its operations and automated systems must address each of the following categories of risk analysis and oversight:

(1) Information security;

(2) Business continuity-disaster recovery planning and resources;

(3) Capacity and performance planning;

(4) Systems operations;

(5) Systems development and quality assurance; and

(6) Physical security and environmental controls.

(b) In addressing the categories of risk analysis and oversight required under paragraph (a) of this section, a designated contract market should follow generally accepted standards and best practices with respect to the development, operation, reliability, security, and capacity of automated systems.

(c) A designated contract market must maintain a business continuity-disaster recovery plan and business continuity-disaster recovery resources, emergency procedures, and backup facilities sufficient to enable timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its responsibilities and obligations as a designated contract market following any disruption of its operations. Such responsibilities and obligations include, without limitation, order processing and trade matching; transmission of matched orders to a designated clearing organization for clearing; price reporting; market surveillance; and maintenance of a comprehensive audit trail. The designated contract market’s business continuity-disaster recovery plan and resources generally should enable resumption of trading and clearing of the designated contract market’s products during the next business day following the disruption. Designated contract markets determined by the Commission to be critical financial markets are subject to more stringent requirements in this regard, set forth in § 40.9 of this chapter. Electronic trading is an acceptable backup for open outcry trading in the event of a disruption.

(d) A designated contract market that is not determined by the Commission to be a critical financial market satisfies the requirement to be able to resume trading and clearing during the next business day following a disruption by maintaining either:

(1) Infrastructure and personnel resources of its own that are sufficient to ensure timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its responsibilities and obligations as a designated contract market following any disruption of its operations; or

(2) Contractual arrangements with other designated contract markets or disaster recovery service providers, as appropriate, that are sufficient to ensure continued trading and clearing of the designated contract market’s products, and ongoing fulfillment of all of the designated contract market’s responsibilities and obligations with respect to those products, in the event that a disruption renders the designated contract market temporarily or permanently unable to satisfy this requirement on its own behalf.

(e) A designated contract market must notify Commission staff promptly of all:

(1) Electronic trading halts and significant systems malfunctions;

(2) Cyber security incidents or targeted threats that actually or potentially jeopardize automated system operation, reliability, security, or capacity; and

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