the environment in which it operates is a change that would significantly change the accuracy and usefulness of the existing responses;

c) Disclose, publicly and to the Commission, relevant basic data on transaction volume and values; and

d) Disclose, publicly and to the Commission, rules, policies, and procedures concerning segregation and portability of customers’ positions and funds, including whether each of:

(1) Futures customer funds, as defined in §1.3(jj) of this chapter;

(2) Cleared Swaps Customer Collateral, as defined in §22.1 of this chapter; or

(3) Foreign futures or foreign options secured amount, as defined in §1.3(rr) of this chapter is:

(i) Protected on an individual or omnibus basis or

(ii) Subject to any constraints, including any legal or operational constraints that may impair the ability of the systemically important derivatives clearing organization or subpart C derivatives clearing organization to segregate or transfer the positions and related collateral of a clearing member’s customers.

§ 39.38 Efficiency for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

(a) General rule. In order to meet the needs of clearing members and markets, each systemically important derivatives clearing organization and subpart C derivatives clearing organization should efficiently and effectively design its:

(1) Clearing and settlement arrangements;

(2) Operating structure and procedures;

(3) Scope of products cleared; and

(4) Use of technology.

(b) Review of efficiency. Each systemically important derivatives clearing organization and subpart C derivatives clearing organization should establish a mechanism to review, on a regular basis, its compliance with paragraph (a) of this section.

(c) Clear goals and objectives. Each systemically important derivatives clearing organization and subpart C derivatives clearing organization should have clearly defined goals and objectives that are measurable and achievable, including in the areas of minimum service levels, risk management expectations, and business priorities.

(d) Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall facilitate efficient payment, clearing and settlement by accommodating internationally accepted communication procedures and standards.

§ 39.39 Recovery and wind-down for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

(a) Definitions. For purposes of this section:

(1) General business risk means any potential impairment of a systemically important derivatives clearing organization’s or subpart C derivatives clearing organization’s financial position, as a business concern, as a consequence of a decline in its revenues or an increase in its expenses, such that expenses exceed revenues and result in a loss that the derivatives clearing organization must charge against capital.

(2) Wind-down means the actions of a systemically important derivatives clearing organization or subpart C derivatives clearing organization to effect the permanent cessation or sale or transfer or one or more services.

(3) Recovery means the actions of a systemically important derivatives clearing organization or subpart C derivatives clearing organization, consistent with its rules, procedures, and other ex-ante contractual arrangements, to address any uncovered credit loss, liquidity shortfall, capital inadequacy, or business, operational or other structural weakness, including the replenishment of any depleted pre-funded financial resources and liquidity arrangements, as necessary to maintain the systemically important derivatives clearing organization’s or subpart C derivatives clearing organization’s viability as a going concern.

(4) Operational risk means the risk that deficiencies in information systems or internal processes, human errors, management failures or disruptions from external events will result...
in the reduction, deterioration, or breakdown of services provided by a systemically important derivatives clearing organization or subpart C derivatives clearing organization.

(5) Unencumbered liquid financial assets include cash and highly liquid securities.

(b) Recovery and wind-down plan. Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall maintain viable plans for:

(1) Recovery or orderly wind-down, necessitated by uncovered credit losses or liquidity shortfalls; and, separately,

(2) Recovery or orderly wind-down necessitated by general business risk, operational risk, or any other risk that threatens the derivatives clearing organization’s viability as a going concern.

(c)(1) In developing the plans specified in paragraph (b) of this section, the systemically important derivatives clearing organization shall identify scenarios that may potentially prevent it from being able to meet its obligations, provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-down. The plans shall include procedures for informing the Commission, as soon as practicable, when the recovery plan is initiated or wind-down is pending.

(2) A systemically important derivatives clearing organization or subpart C derivatives clearing organization shall have procedures for providing the Commission and the Federal Deposit Insurance Corporation with information needed for purposes of resolution planning.

(d) Financial resources to support the recovery and wind-down plan.

(1) In evaluating the resources available to cover an uncovered credit loss or liquidity shortfall as part of its recovery plans pursuant to paragraph (b)(1) of this section, a systemically important derivatives clearing organization or subpart C derivatives clearing organization may consider, among other things, assessments of additional resources provided for under its rules that it reasonably expects to collect from non-defaulting clearing members.

(2) Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall maintain sufficient unencumbered liquid financial assets, funded by the equity of its owners, to implement its recovery or wind-down plans pursuant to paragraph (b)(2) of this section. In general, the financial resources required by §39.11(a)(2) may be sufficient, but the systemically important derivatives clearing organization or subpart C derivatives clearing organization shall analyze its particular circumstances and risks and maintain any additional resources that may be necessary to implement the plans. In allocating sufficient financial resources to implement the plans, the systemically important derivatives clearing organization or subpart C derivatives clearing organization shall comply with §39.11(e)(2). The plan shall include evidence and analysis to support the conclusion that the amount considered necessary is, in fact, sufficient to implement the plans.

(3) Resources counted in meeting the requirements of §§39.11(a)(1) and 39.33 may not be allocated, in whole or in part, to the recovery plans required by paragraph (b)(2) of this section. Other resources may be allocated, in whole or in part, to the recovery plans required by either paragraphs (b)(1) or (2) of this section, but not both paragraphs, and only to the extent the use of such resources is not otherwise limited by the Act, Commission regulations, the systemically important derivatives clearing organization’s or subpart C derivatives clearing organization’s rules, or any contractual arrangements to which the systemically important derivatives clearing organization or subpart C derivatives clearing organization is a party.

(e) Plan for raising additional financial resources. All systemically important derivatives clearing organizations and subpart C derivatives clearing organizations shall maintain viable plans for raising additional financial resources, including, where appropriate, capital, in a scenario in which the systemically important derivatives clearing organization or subpart C derivatives clearing organization’s capital is needed to maintain systemic stability.
organization is unable, or virtually un-
able, to comply with any financial re-
sources requirements set forth in this
part. This plan shall be approved by
the board of directors and be updated
regularly.

(f) The Commission may, upon re-
quest, grant an entity, which has been
designated as a systemically important
derivatives clearing organization or
that has elected to become subject to
subpart C, up to one year to comply
with any provision of this section or of
§39.35.

§39.40 Consistency with the Principles
for Financial Market Infrastruc-
tures.

This subpart C is intended to estab-
lish standards which, together with
subparts A and B of this part, are con-
sistent with section 5b(c) of the Act
and the Principles for Financial Mar-
et Market Infrastructures published by the
Committee on Payment and Settlement
Systems and the Board of the Inter-
national Organization of Securities
Commissions and should be inter-
preted in that context.

§39.41 Special enforcement authority
for systemically important deriva-
tives clearing organizations.

For purposes of enforcing the provi-
sions of Title VIII of the Dodd-Frank
Act, a systemically important deriva-
tives clearing organization shall be
subject to, and the Commission has au-
thority under the provisions of sub-
sections (b) through (n) of section 8 of
the Federal Deposit Insurance Act (12
U.S.C. 1818) in the same manner and to
the same extent as if the systemically
important derivatives clearing organi-
zation were an insured depository in-
stitution and the Commission were the
appropriate Federal banking agency
for such insured depository institution.

§39.42 Advance notice of material
risk-related rule changes by system-
ically important derivatives clear-
ing organizations.

A systemically important derivatives
clearing organization shall provide no-
tice to the Commission in advance of
any proposed change to its rules, proce-
dures, or operations that could materi-
ally affect the nature or level of risks
presented by the systemically impor-
tant derivatives clearing organization,
in accordance with the requirements of
§40.10 of this chapter.