COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 39, and 140

RIN 3038–AE66

Derivatives Clearing Organization General Provisions and Core Principles

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) is proposing amendments to certain regulations applicable to registered derivatives clearing organizations (DCOs). These proposed amendments would, among other things, address certain risk management and reporting obligations, clarify the meaning of certain provisions, simplify processes for registration and reporting, and codify existing staff relief and guidance. In addition, the Commission is proposing technical amendments to certain provisions, including certain delegation provisions, in other parts of its regulations.

DATES: Comments must be received by July 15, 2019.

ADDRESSES: You may submit comments, identified by ''Derivatives Clearing Organization General Provisions and Core Principles'' and RIN 3038–AE66, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

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I. Background

A. Project KISS

The Commission is engaging in an agency-wide review of its rules, regulations, and practices to make them simpler, less burdensome, and less costly, and to make progress on G–20 regulatory reforms. This initiative is called Project KISS, which stands for ''Keep It Simple, Stupid.''[2] Consistent with these objectives, the Commission is proposing amendments to regulations applicable to DCOs to, among other things, enhance certain risk management and reporting obligations, clarify the meaning of certain provisions, simplify processes for registration and reporting, and codify existing relief and guidance.

B. Regulatory Framework for DCOs

Section 5b(c)(2) of the Commodity Exchange Act (CEA) sets forth core principles with which a DCO must comply in order to be registered and to maintain registration as a DCO (DCO Core Principles).[3] In 2011, the Commission adopted regulations in

[1] 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR chapter I (2018), and are accessible on the Commission's website at *https://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm.*

[2] *See* Remarks of Acting Chairman J. Christopher Giancarlo before the 42nd Annual International Futures Industry Conference in Boca Raton, FL, Mar. 15, 2017, available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-20.* On February 24, 2017, President Donald J. Trump issued Executive Order 13777: Enforcing the Regulatory Reform Agenda (E.O. 13777). E.O. 13777 directs federal agencies, among other things, to designate a Regulatory Reform Officer and establish a Regulatory Reform Task Force. Although the CFTC, as an independent federal agency, is not bound by E.O. 13777, the Commission is nevertheless engaging in an agency-wide review of its rules, regulations, and practices to make them simpler, less burdensome, and less costly. *See* Request for Information, 82 FR 23756 (May 24, 2017).

[3] 7 U.S.C. 7a–1.

subparts A and B of part 39 to implement the DCO Core Principles.[4] In 2013, the Commission adopted regulations in subpart C of part 39[5] to establish additional standards for compliance with the DCO Core Principles for those DCOs that have been designated as systemically important (SIDCOs) by the Financial Stability Oversight Council in accordance with Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[6] The subpart C regulations are consistent with the Principles for Financial Market Infrastructures (PFMIs), published by the Committee on Payments and Market Infrastructures (CPMI) and the Technical Committee of the International Organization of Securities Commissions (IOSCO).[7] Other DCOs may elect to opt-in to the subpart C requirements (subpart C DCOs) in order to achieve status as a qualifying central counterparty (QCCP).[8]

Since the part 39 regulations were adopted, Commission staff has worked with DCOs to address questions regarding interpretation and implementation of the requirements established in the regulations. In light of this, the Commission believes it would be helpful to revise or clarify certain provisions of part 39 and to codify staff relief or guidance granted in the interim. The Commission is also proposing a few new requirements with respect to default procedures and event-specific reporting in response to recent events. The Commission believes these changes will provide greater clarity and transparency for DCOs and DCO applicants and lead to more effective DCO compliance and risk management generally.

The Commission has carefully considered the costs and benefits associated with the proposed amendments, and invites commenters to provide data and analysis regarding any aspect of the proposed rulemaking. In addition to the amendments proposed herein, the Commission requests comment for any other aspects of part 39 that commenters believe the Commission should clarify or otherwise amend.

II. Amendments to Part 1—General Regulations Under the Commodity Exchange Act

A. Written Acknowledgment From Depositories—§ 1.20

Regulation 1.20(d)(1) requires that a futures commission merchant (FCM) obtain a written acknowledgment from each depository with which the FCM deposits futures customer funds.[9] The written acknowledgment must conform to a template letter set forth in appendix A to § 1.20, and the template letter includes certain requirements set forth in § 1.20(d)(3) through (6). Regulation 1.20(d)(1) further provides, however, that an FCM is not required to obtain a written acknowledgment from a DCO that has adopted rules that provide for the segregation of customer funds in accordance with all relevant provisions of the CEA and the Commission's rules and orders thereunder. The Commission is proposing to amend § 1.20(d) to clarify that the requirements listed in § 1.20(d)(3) through (6) do not apply to a DCO, or to an FCM that clears through that DCO, if the DCO has adopted rules that provide for the segregation of customer funds. The proposed changes are not intended to be substantive, but rather to reflect the Commission's intent when § 1.20 was last amended. Nonetheless, the Commission emphasizes that it has ample means of obtaining information regarding accounts held at a DCO under § 1.20 by virtue of its ongoing oversight and supervision of DCOs. The Commission also is proposing to amend § 1.20(d)(7) and (8) to explicitly account for FCMs that deposit customer funds with a DCO and thus are not required to obtain a written acknowledgment letter.

B. Governance and Conflicts of Interest—§§ 1.59, 1.63, and 1.69

In the course of adopting the current part 39 regulations, the Commission removed and replaced § 39.2,[10] which had exempted DCOs from all Commission regulations except for those specified therein (the ''§ 39.2 exemption''). The Commission noted that the § 39.2 exemption failed to account for regulations applicable to DCOs that were adopted later, such as § 1.49.[11] The Commission further noted that removal of the § 39.2 exemption would subject DCOs only to § 1.49 and three additional regulations: §§ 1.59 (activities of self-regulatory organization employees, governing board members, committee members, and consultants); 1.63 (service on self-regulatory organization governing boards or committees by persons with disciplinary histories); and 1.69 (voting by interested members of self-regulatory organization governing boards and various committees).[12] The Commission explained that these three provisions would be superseded by regulations the Commission had proposed to implement Core Principles O (Governance Arrangements), P (Conflicts of Interest), and Q (Composition of Governing Boards).[13]

However, the Commission did not adopt those regulations, and §§ 1.59, 1.63, and 1.69 became applicable to DCOs. The Commission is now proposing to adopt implementing regulations for Core Principles O, P, and Q by moving certain requirements from subpart C, which is applicable to only SIDCOs and subpart C DCOs, to subpart B, which is applicable to all registered

[4] *See* Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334 (Nov. 8, 2011) (codified at 17 CFR part 39); Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 FR 21278 (Apr. 9, 2012) (further amending § 39.12).

[5] Derivatives Clearing Organizations and International Standards, 78 FR 72476 (Dec. 2, 2013).

[6] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[7] *See* CPMI–IOSCO, Principles for Financial Market Infrastructures (Apr. 2012), available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf.*

[8] In July 2012, the Basel Committee on Banking Supervision, the international body that sets standards for the regulation of banks, published the ''Capital Requirements for Bank Exposures to Central Counterparties'' (Basel CCP Capital Requirements), which describes standards for capital charges arising from bank exposures to central counterparties (CCPs) related to over-the-counter derivatives, exchange-traded derivatives, and securities financing transactions. The Basel CCP Capital Requirements create financial incentives for banks, including their subsidiaries and affiliates, to clear financial derivatives with CCPs that are prudentially supervised in a jurisdiction where the relevant regulator has adopted rules or regulations that are consistent with the standards set forth in the PFMIs. Specifically, the Basel CCP Capital Requirements introduce new capital charges based on counterparty risk for banks conducting financial derivatives transactions through a CCP. These incentives include (1) lower capital charges for exposures arising from derivatives cleared through a QCCP, and (2) significantly higher capital charges for exposures arising from derivatives cleared through non-qualifying CCPs. A QCCP is defined as an entity that (i) is licensed to operate as a CCP and is permitted by the appropriate regulator to operate as such, and (ii) is prudentially supervised in a jurisdiction where the relevant regulator has established and publicly indicated that it applies to the CCP, on an ongoing basis, domestic rules and regulations that are consistent with the PFMIs. The failure of a CCP to achieve QCCP status could result in significant costs to its bank customers.

[9] Regulation 22.5 applies the written acknowledgment letter requirements of § 1.20(d) to FCMs and DCOs in connection with the holding of cleared swaps customer collateral.

[10] The current § 39.2 sets forth definitions of terms used in part 39.

[11] *See* Risk Management Requirements for Derivatives Clearing Organizations, 76 FR 3698, 3714 (Jan. 20, 2011) (proposed rule).

[12] *Id.* at 3714 & n.77.

[13] *See* Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 FR 63732 (Oct. 18, 2010) (proposed rule); Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; Additional Requirements Regarding the Mitigation of Conflicts of Interest, 76 FR 722 (Jan. 6, 2011) (proposed rule).

DCOs (discussed further below). Therefore, the Commission is proposing to restore DCOs' exemption from §§ 1.59, 1.63, and 1.69 by removing ''clearing organization'' from the definition of ''self-regulatory organization'' in each of those regulations. The Commission is also proposing to amend § 1.64 to remove language that makes clear that the provision does not apply to DCOs. The amendments to the other provisions make that language no longer necessary.

III. Amendments to Part 39—Subpart A—General Provisions Applicable to DCOs

A. Definitions—§ 39.2

Regulation 39.2 sets forth definitions applicable to terms used in part 39 of the Commission's regulations. Since § 39.2 was adopted, the Commission has adopted definitions for some of the same terms that apply in other Commission regulations. Accordingly, the Commission is proposing amendments to § 39.2 in order to maintain consistency with terms defined elsewhere in Commission regulations and to provide clarity with respect to the use of these terms.

1. Business Day

Regulation 39.19(b)(3) defines ''business day,'' but because the definition is contained within § 39.19, it is not clear that it is applicable to uses of the term ''business day'' elsewhere in part 39. The Commission is therefore proposing to remove § 39.19(b)(3) and include the definition of ''business day'' in § 39.2. The Commission also is proposing to clarify that the term ''Federal holidays'' in the ''business day'' definition refers to the schedule of U.S. federal holidays established under 5 U.S.C. 6103. The Commission is specifying this because some DCOs registered with the Commission are located outside the United States. Finally, the Commission is defining ''foreign holiday'' as a day on which a DCO and its domestic financial markets are closed for a holiday that is not a Federal holiday in the United States, and adding the term to the list of exceptions to the definition of ''business day.'' The Commission believes there is no reason to require foreign DCOs to report on a non-trading day.

2. Customer

Regulation 39.2 defines ''customer,'' for purposes of part 39, as a person trading in any commodity named in the definition of ''commodity'' in section 1a(9) of the CEA or in § 1.3 of the Commission's regulations, or in any swap as defined in section 1a(47) of the CEA or in § 1.3. The definition further distinguishes a customer from the owner or holder of a house account.

After § 39.2 was adopted, the Commission amended the definition of ''customer'' in § 1.3, to mean any person who uses a futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator as an agent in connection with trading in any commodity interest. The Commission also amended the definition of ''commodity interest'' in § 1.3 to include any swap as defined in the CEA, by the Commission, or jointly by the Commission and the Securities and Exchange Commission.

Because the definition of ''customer'' in § 1.3 now encompasses the definition in § 39.2, the Commission believes that the definition in § 39.2 is unnecessary and may create uncertainty. Therefore, the Commission is proposing to remove the definition of ''customer'' in § 39.2, leaving the definition in § 1.3 as the applicable definition for purposes of part 39.

3. Customer Account or Customer Origin

Regulation 39.2 defines ''customer account or customer origin'' as a clearing member account held on behalf of customers that is subject to section 4d(a) or section 4d(f) of the CEA. After § 39.2 was adopted, the Commission adopted the definition of ''customer account'' in § 1.3 to include both a futures account and a cleared swaps customer account, which are accounts subject to sections 4d(a) and 4d(f) of the CEA, respectively.

The Commission believes that having a definition of ''customer account or customer origin'' in § 39.2 and a definition of ''customer account'' in § 1.3 may create uncertainty. Because the part 39 regulations use both ''customer account'' and ''customer origin'' terms, the Commission is proposing to amend the definition of ''customer account or customer origin'' in § 39.2 to cross-reference the definition of ''customer account'' in § 1.3, rather than removing the definition or the term ''customer origin.''

4. Enterprise Risk Management

The Commission is proposing to define ''enterprise risk management'' because the term is used in proposed § 39.10(d), which is discussed below.

5. Fully-Collateralized Position

The Commission is proposing to define ''fully-collateralized position'' in conjunction with proposed exceptions from several part 39 regulations for DCOs that clear fully-collateralized positions, as discussed below.

6. Key Personnel

The Commission is proposing to add ''chief information security officer'' to the list of positions identified in the definition of ''key personnel'' in § 39.2. In the event of a cybersecurity incident, it is critical that Commission staff be able to quickly contact the person at each DCO responsible for responding to the incident to assess the DCO's response as well as to coordinate efforts among DCOs as necessary.

B. Procedures for Registration—§ 39.3

1. Application Procedures—§ 39.3(a)

The Commission is proposing to make several changes to its procedures for registration as a DCO, set forth in § 39.3. Regulation 39.3(a)(1) refers to ''[a]n organization desiring to be registered as a [DCO],'' while § 39.3(a)(2) refers to ''[a]ny person seeking to register as a [DCO].'' To make the language consistent, the Commission is proposing to revise § 39.3(a)(1) and (2) to refer to an ''entity seeking to register as a [DCO].'' The Commission is proposing additional changes to § 39.3(a)(1) to improve the clarity of the text.

Regulation 39.3(a)(2) requires an applicant for DCO registration to submit to the Commission a completed Form DCO, which is provided in appendix A to part 39.[14] Since the adoption of Form DCO, the Commission has identified several areas in which changes to Form DCO are needed. Many of the revisions to the part 39 regulations proposed herein would require corresponding changes to Form DCO. Therefore, the Commission is proposing to revise Form DCO as discussed in Section VI. below.

Regulation 39.3(a)(3) provides that at any time during the application review process, the Commission may request that the DCO applicant submit supplemental information in order for the Commission to process the application. An applicant is required to ''file electronically'' such supplemental information with the Secretary of the Commission, in the format and manner specified by the Commission. The Commission is proposing to amend § 39.3(a)(3) to require an applicant to ''provide'' such supplemental information and to delete the

[14] At the time § 39.3(a)(2) was adopted, Form DCO was the only appendix to part 39. Since then, appendices have been added to part 39, and Form DCO is now set forth in appendix A. Therefore, the Commission is proposing to revise § 39.3(a)(2) to reference ''Form DCO . . . as provided in appendix A to this part.''

requirement that it be filed with the Secretary of the Commission. By making these changes, yet retaining the requirement that the information be provided in the format and manner specified by the Commission, the Commission and DCO applicants would have greater flexibility. For example, the Commission would be able to permit an applicant to provide requested information through a presentation to Commission staff.

Regulation 39.3(a)(5) provides for certain sections of a DCO application to be made public, including the ''first page of the Form DCO cover sheet.'' The regulation refers to Form DCO as it appears in the print edition of the Code of Federal Regulations. However, the Commission is aware that Form DCO may appear differently in other sources, so the Commission is proposing to amend § 39.3(a)(5) to specify that the ''first page of the Form DCO cover sheet (up to and including the General Information section)'' will be made public. The Commission is also proposing to revise the provision to include specific references to the Form DCO exhibits that will be made public.

Finally, the Commission is proposing to adopt new § 39.3(a)(6), which would permit the Commission to extend the 180-day review period for DCO applications specified in § 39.3(a)(1) for any period of time to which the applicant agrees in writing. This provision would be similar to § 40.5(d)(2), which allows the Commission to extend the review period for rules submitted for Commission review and approval, if the registered entity that submitted the rule agrees in writing. The Commission believes it is important to have the ability to extend the review period for a DCO application so that, in the event that any issues or concerns arise that cannot be resolved in a timely manner, the Commission does not find itself in the position of having to deny the application.

2. Stay of Application Review—§ 39.3(b)

Regulation 39.3(b)(2) provides for delegation to the Director of the Division, with the concurrence of the General Counsel, the authority to notify an applicant ''seeking designation under section 6(a) of the [CEA]'' that the application is materially incomplete and the running of the 180-day period is stayed. By its terms, section 6(a) of the CEA applies only to designation of contract markets. However, under § 39.3(a), the Commission applies the same procedures to DCO applications. Because DCOs are ''registered'' and not ''designated,'' the Commission is substituting ''registration'' for ''designation'' in § 39.3(b)(2).

3. Amendment of an Order of Registration—§ 39.3(a)(2)

Regulation 39.3(a)(2) specifies that any person seeking to register as a DCO, any applicant amending its pending application, and any registered DCO seeking to amend its order of registration must submit to the Commission a completed Form DCO, which must include a cover sheet, all applicable exhibits, and any supplemental materials, including amendments thereto, as provided in appendix A to part 39. The Form DCO instructions correspond to this requirement and currently specify that requests for amending a registration order and any associated exhibits must be submitted via Form DCO.

The Commission is proposing to change the requirements regarding a DCO's request to amend an order of registration. First, the Commission proposes to amend § 39.3(a)(2) and Form DCO to eliminate the required use of Form DCO to request an amended order of registration from the Commission. Under current practice, a DCO is permitted to file a request for an amended order with the Commission rather than submitting Form DCO. Commission staff typically will review the request, obtain additional information from the DCO where necessary, and subsequently recommend to the Commission whether to grant or deny the amended order. Given current practice, the Commission believes that an updated Form DCO is not needed to request an amended order of registration. Second, the Commission proposes to amend § 39.3(a)(4) to state that an applicant only needs to file amended exhibits and other information when filing a Form DCO to update a pending application.

Consistent with existing Commission practice and the proposal to eliminate the use of Form DCO to request an amended registration order, the Commission is proposing new § 39.3(d) to establish a separate process for such requests. A DCO would be required to provide the Commission with any additional information and documentation necessary to review a request to amend an order of registration. The Commission would issue an amended order if the Commission determines that the DCO would continue to maintain compliance with the Act and the Commission's regulations after such an amendment. Further, the Commission may also issue an amended order of registration subject to conditions. The Commission also proposes to specify that it may decline to issue an amended order based upon a determination that the DCO would not continue to maintain compliance with the Act and the Commission's regulations upon such amendment.

4. Dormant Registration—§ 39.3(d)

Regulation 39.3(d) establishes the procedure for a dormant DCO to reinstate its registration before it can begin ''listing or relisting'' products for clearing. The Commission is proposing to replace ''listing or relisting'' with ''accepting'' to more accurately describe a DCO's activities. The Commission also proposes to renumber § 39.3(d) as § 39.3(e).

5. Vacation of Registration—§ 39.3(e)

Section 7 of the CEA and § 39.3(e) of the Commission's regulations permit a DCO to request that the Commission vacate its registration. Orders of vacation of registration issued by the Commission have included requirements based on section 7 of the CEA and other Commission regulations that are not specifically listed in § 39.3(e). The Commission is proposing to amend § 39.3(e) to codify these requirements and provide greater transparency to any DCO that is considering vacating its registration. To implement the proposed changes, the Commission is proposing to renumber current § 39.3(e) as § 39.3(f)(1).

Section 7 of the CEA requires any registered entity that wishes to have its registration vacated to make a written request to the Commission. Section 7 also requires that the request be made at least 90 days prior to the date on which the registered entity wants the vacation to take effect. The Commission is proposing to adopt § 39.3(f)(1)(i) to specifically require a DCO to state in its request the date it wishes to have its registration vacated and to make the request at least 90 days prior to that date.

The Commission is also proposing to adopt § 39.3(f)(1)(ii) to require a DCO to state in its request how it intends to transfer or otherwise unwind all open positions at the DCO. Under the proposed rule, any actions to transfer or unwind positions would be required to reflect the interests of affected clearing members and their customers. The Commission believes this requirement will help ensure that a DCO that plans to voluntarily cease its clearing activity will do so with minimal disruptions to its members and the markets it serves.

The Commission is proposing to adopt § 39.3(f)(1)(iii) and (iv) to require a DCO to continue to maintain its books and records after its registration has

been vacated for the requisite statutory and regulatory retention periods, and to require a DCO to make all such books and records available for inspection by any representative of the Commission or the United States Department of Justice after its registration has been vacated, as set forth in § 1.31 of the Commission's regulations. The Commission has included this requirement in previous orders of vacation based on § 39.3(f), which states that a vacation of registration ''shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the entity was registered with the Commission.'' [15] The Commission is proposing this requirement to further ensure that a DCO does not destroy its books and records in order to hinder or avoid Commission action following the vacation of its registration.

Finally, section 7 of the CEA requires the Commission to ''forthwith send a copy'' of the notice that was filed with the Commission requesting vacation and the order of vacation to all other registered entities. The Commission is proposing to adopt § 39.3(f)(2) to specify that this requirement will be met by posting the required documents on the Commission's website. This provision was written and amended before the internet expanded to its current form and level of access.[16] The Commission believes that posting the required documents on its website is the most effective and efficient way of providing the required information to all registered entities, as well as the public.

6. Request for Transfer of Registration and Open Interest—§ 39.3(f)

Regulation 39.3(f) establishes procedures that a DCO must follow to request the transfer of its DCO registration and positions comprising open interest for clearing and settlement, in anticipation of a corporate change. Regulation 39.3(f) also pertains to instances in which a corporate change results in the transfer of all or substantially all of a DCO's assets to another legal entity.

Commission staff has found that the requirements of § 39.3(f) have created confusion for DCOs which merely want to convert the DCO from one type of legal entity to another or change the place of domicile for the DCO's legal entity without changing the DCO's operations or transferring the DCO's registration to new ownership. The Commission also recognizes that a transfer of open interest would not necessarily be tied to a corporate change.[17] For example, a DCO may wish to transfer open interest to another DCO that is also a subsidiary of the same parent company, or to another DCO in connection with ceasing its clearing services for a particular product.

To separate the procedures for a request to transfer open interest from those procedures to report a change to the DCO's corporate structure or ownership, the Commission is proposing changes to § 39.3(f), to be renumbered as § 39.3(g), to simplify the requirements for requesting a transfer of open interest and remove references to transfers of registration and requirements regarding corporate changes. Proposed § 39.3(g) would only apply to instances in which a DCO requests to transfer its open interest. Changes to the DCO's ownership would continue to be addressed under § 39.19(c)(4)(viii) (proposed to be renumbered as § 39.19(c)(4)(ix)). Additionally, as discussed further below, the Commission is proposing to require a DCO to report a change to the legal name under which it operates in proposed § 39.19(c)(4)(xi). The Commission is also proposing conforming changes to § 39.19(c)(4)(ix) to remove cross-references to § 39.3(f).

Under the proposed amendments to § 39.3(g), a DCO seeking to transfer its open interest would be required to submit rules for Commission approval pursuant to § 40.5,[18] rather than submitting a request for an order at least three months prior to the anticipated transfer. In an effort to simplify the existing requirements, the proposed change would permit the transfer to take effect after a 45-day Commission review period. The 45-day review period would be intended to ensure that clearing members are made aware of the intended transfer and to determine whether the transferee DCO is suitable to take on the transfer [19] and would be able to continue to operate in compliance with the CEA and the Commission's regulations. As part of its submission pursuant to § 40.5, the DCO would be required to include: (1) The underlying agreement that governs the transfer; (2) a description of the transfer, including the reason for the transfer and its impact on the rights and obligations of clearing members and market participants holding positions that comprise the DCO's open interest; (3) a discussion of the transferee's ability to comply with the CEA, including the DCO Core Principles, and the Commission's regulations thereunder; (4) the transferee's rules marked to show changes that would result from acceptance of the transferred positions; (5) a list of products for which the DCO requests transfer of open interest; and (6) a representation by the transferee that it is in and will maintain compliance with the CEA, including the DCO Core Principles, and the Commission's regulations thereunder upon transfer of the open interest.

C. Procedures for Implementing DCO Rules and Clearing New Products

1. Request for Approval of Rules—§ 39.4(a)

Regulation 39.4(a) specifies that an applicant for registration or a registered DCO may request, pursuant to the procedures set forth in § 40.5, that the Commission approve any or all of its rules prior to their implementation. In practice, the Commission's review of applications for DCO registration includes review of the applicant's rules, which are required to be submitted as Exhibit A–2 to Form DCO. The Commission's issuance of an order of registration as a DCO constitutes an approval of the applicant's rules that were submitted as part of the application. Accordingly, the Commission is proposing to delete the reference in § 39.4(a) to an applicant for registration, as it is unnecessary for an applicant to separately request approval of its rules.

2. Portfolio Margining—§ 39.4(e)

Regulation 39.4(e) establishes certain procedural requirements that apply to a DCO seeking approval for a futures account portfolio margining program. Under § 39.4(e), a DCO seeking to provide a portfolio margining program under which securities would be held in

[15] To accommodate the proposed changes, the Commission is proposing to include this sentence as part of § 39.3(f)(1).

[16] The requirement to send a copy of the notice and order was first included in section 7 in 1922. The Grain Futures Act, Public Law 67–331 ch. 369, sec. 7, 42 Stat. 1002 (1922). Section 7 was most recently amended in 2000, to cover all types of registered entities, including DCOs. Commodity Futures Modernization Act of 2000, Public Law 106–554, Title I, sec. 123(a)(17), 114 Stat. 2763 (2000).

[17] The Commission notes, however, that a transfer of open interest in this regard would not be in the context of a default, which would typically involve a DCO transferring positions from one FCM to another FCM.

[18] SIDCOs should consider whether the facts and circumstances of the approval sought pursuant to a § 40.5 filing also obligate a SIDCO to file a § 40.10 submission.

[19] The Commission notes that, under the existing framework, positions cleared for U.S. customers must be cleared by a registered DCO, while proprietary positions of U.S. persons may be cleared by registered or exempt DCOs. As a result, the Commission would need to ensure that the positions are transferred to an entity that is appropriately registered or exempt from DCO registration.

a futures account is required to petition the Commission for an order ''under section 4d of the [CEA].'' To conform terminology to other provisions in part 39 which distinguish between futures accounts subject to section 4d(a) of the CEA and cleared swaps accounts subject to section 4d(f) of the CEA, the Commission is proposing to substitute ''section 4d(a)'' for ''section 4d'' in § 39.4(e).

IV. Amendments to Part 39—Subpart B—Compliance With Core Principles

A. Compliance With Core Principles—§ 39.10

1. Chief Compliance Officer—§ 39.10(c)

Regulation 39.10(c)(1)(ii) requires that a DCO's chief compliance officer (CCO) report to the board of directors or the senior officer of the DCO. The Commission recognizes that a legal entity registered as a DCO may engage in substantial activities not related to clearing, in which case it may be more appropriate for the CCO to report to the senior officer responsible for the DCO's clearing activities. For example, traditionally, exchanges have had clearing operations as a component of their overall structure. In some instances, the exchange is the same legal entity as the DCO, and therefore, the senior officer of the entity would not necessarily be focused on the clearing operations. In light of this, the Commission is proposing to amend § 39.10(c)(1)(ii) to permit the CCO to report to the senior officer responsible for the DCO's clearing activities. The Commission also is proposing to amend § 39.10(c)(4)(i) to permit the CCO to submit the annual report (which is discussed below) to the senior officer responsible for the DCO's clearing activities.[20]

Regulation 39.10(c)(3)(i) requires the CCO to prepare an annual report that contains a description of the DCO's written policies and procedures, including the code of ethics and conflict of interest policies. The Commission is proposing to amend this requirement to allow a DCO to incorporate by reference the parts of its most recent CCO annual report containing such description, to the extent that the DCO's written policies and procedures have not materially changed since they were most recently described in a previously submitted CCO annual report. This is intended to help make the process of preparing the CCO annual report more efficient by not requiring the report to repeat potentially lengthy descriptions of policies and procedures that have already been described in a CCO annual report previously submitted to the Commission. However, to ensure that the descriptions remain current and easily accessible, the Commission is proposing to allow this incorporation by reference only to a CCO annual report submitted to the Commission within the five-year period prior to the date of the CCO annual report containing such incorporation by reference. The Commission believes that this timeframe is appropriate given the record retention requirements of § 39.20. The Commission wishes to stress that this ability to incorporate by reference only applies to descriptions of policies and procedures that have not materially changed and does not apply to the CCO's assessment of their effectiveness or other requirements outside of § 39.10(c)(3)(i).

The Commission also is proposing to amend § 39.10(c)(3)(ii)(A), which requires the CCO to prepare an annual report that reviews each ''core principle and applicable Commission regulation,'' and with respect to each, identifies the compliance policies and procedures that are designed to ensure compliance ''with the core principle.'' In order to be consistent with the first part of the requirement, the Commission is proposing to change the language of the second part to ''with each core principle and applicable regulation.'' The Commission is further proposing to amend § 39.10(c)(3)(ii) to clarify that, for SIDCOs and subpart C DCOs, this includes the Commission's regulations in subpart C of part 39. In addition, the Commission is further proposing to require that the compliance policies and procedures be identified ''by name, rule number, or other identifier'' to clarify that this provision is intended to require the CCO annual report to clearly and specifically identify the policies and procedures intended to comply with each core principle and applicable regulation.

Finally, § 39.10(c)(4)(i) requires the CCO to provide the annual report to the board of directors or senior officer of the DCO for review prior to submitting it to the Commission. The Commission is proposing to amend the provision to require that this process be described in the annual report, including providing the date on which the report was submitted to the board of directors or senior officer. The Commission notes that § 39.10(c)(4)(i) already requires the submission of the report to the board of directors or senior officer to be recorded in the board of directors' meeting minutes or otherwise, as evidence of compliance with this requirement. However, the Commission believes that it is reasonable to require similar disclosure in the CCO annual report so that compliance is evident outside the context of an examination of the DCO's board of directors' meeting minutes or other records. The Commission notes that some DCOs already describe this process in the cover letter submitted along with the CCO annual report, but the Commission prefers that this description appear in the annual report itself or in an annex, schedule, or exhibit attached to and included with the annual report. The Commission is also proposing to amend § 39.10(c)(4)(ii) by removing the requirement that the CCO annual report be submitted concurrently with the DCO's fiscal year-end audited financial statement, to be consistent with a proposed change to § 39.19(c)(3)(iv) described below.

2. Enterprise Risk Management—§ 39.10(d)

The Commission is proposing to add new § 39.10(d)[21] to specifically provide that a DCO is required to have a program of enterprise risk management, which would be defined in § 39.2 as an enterprise-wide strategic business process intended to identify potential events that may affect the enterprise and to manage the probability or impact of those events on the enterprise as a whole, such that the overall risk remains within the enterprise's risk appetite and provides reasonable assurance that the DCO can continue to achieve its objectives, including compliance with the CEA and

[20] Regulation 39.10(c)(3) also requires the CCO to ''provide the annual report to the board of directors or the senior officer.'' Because this requirement is set forth in greater detail in § 39.10(c)(4)(i), the Commission is proposing to remove, rather than amend, the language in § 39.10(c)(3).

[21] The Commission is proposing to place the requirement for an enterprise risk management program in § 39.10, which codifies Core Principle A (pertaining to compliance with the DCO Core Principles generally), to emphasize the broad application of an enterprise risk management program to a DCO's operations and services. The Commission previously declined to adopt an enterprise risk management requirement applicable to DCOs in a rulemaking pertaining to a specific Core Principle—Core Principle I, ''System Safeguards''—because such a requirement ''must be addressed in a more comprehensive fashion involving more than the system safeguards context alone, and thus are not appropriate for this rulemaking.'' *See* System Safeguards Testing Requirements for Derivatives Clearing Organizations, 81 FR 64322, 64332 (Sept. 19, 2016). Other Commission regulations codify various specific aspects of risk management. For example, § 39.13 codifies Core Principle D, which focuses on market risk and credit risk; § 39.18 codifies Core Principle I, which addresses system safeguards; and § 39.27 codifies Core Principle R, which addresses legal risk. By including the enterprise risk management requirement in § 39.10, the Commission intends to underscore that a properly designed and managed enterprise risk management program covers all risks.

Commission regulations. The proposed definition is intended to be applicable to a variety of corporate structures, including stand-alone DCOs, legal entities that are a DCO but also perform other functions (such as a DCM), and corporate groups that consist of a DCO and legally separate but affiliated entities.[22]

An enterprise risk management program requires an entity to assess all potential risks it faces, including but not limited to systemic, cyber, legal, credit, liquidity, concentration, general business, operational, custody and investment, conduct, financial, reporting, compliance, governance, strategic, and reputational risks. An enterprise risk management program also requires the entity to identify and assess those risks on an enterprise-wide basis, meaning that it must consider whether individual risks across the organization and its affiliates are interrelated and may create a combined exposure to the entity that differs from the sum of the individual risks, and must measure, monitor, and manage such risks accordingly. Additionally, an enterprise risk management program requires an assessment of both the nominal or inherent risk that exists prior to the establishment of any risk mitigation activities (*i.e.,* controls) as well as the residual risk that remains once such mitigation activities or risk responses are taken into account.

Existing Commission regulations already require a DCO to manage its risks.[23] However, the Commission has found that some DCOs lack a formal enterprise risk management program that addresses their risks on an enterprise-wide basis. Therefore, proposed § 39.10(d)(1) and (2) would require a DCO to implement an enterprise risk management program and establish and maintain an enterprise risk management framework.

Consistent with § 39.10(b), the Commission does not intend to be overly prescriptive by requiring specific standards and methodologies. A DCO should develop an enterprise risk management program that works best for its specific risk exposures, product types, customer base, market segment, and organizational structure, among other things, as long as the program meets the proposed minimum standards and any other legal and regulatory requirements.

Therefore, proposed § 39.10(d)(3) would require a DCO to follow generally accepted standards and industry best practices with respect to the development and ongoing monitoring of its enterprise risk management framework, assessment of the performance of the enterprise risk management program, and the management and mitigation of risk to the DCO. The Commission is mindful that best practices evolve and change over time and does not, therefore, wish to prescribe specific standards in its regulations.[24]

The Commission has observed that some DCOs tend to ''silo'' responsibility for complying with their statutory and regulatory obligations given the diverse nature of the relevant risks. For example, risk management personnel might be primarily responsible for compliance with Core Principle D, while information technology personnel might be primarily responsible for managing the risks addressed by Core Principle I. To ensure that the enterprise risk management program is managed appropriately, the Commission is proposing § 39.10(d)(4), which would require a DCO to identify as its enterprise risk officer an appropriate individual that exercises the full responsibility and authority to manage the DCO's enterprise risk management function.[25]

The enterprise risk officer would be required to have the authority, independence, resources, expertise, and access to relevant information necessary to fulfil the responsibilities of such position. The Commission believes that the independence of the enterprise risk officer is a critical factor in allowing such officer to operate effectively and has concerns about the potential for senior officers to interfere with the enterprise risk officer's performance of his or her responsibilities. The Commission requests comment regarding whether the enterprise risk officer should be required to report directly to the board of directors of the organization for which the enterprise risk officer is responsible for managing the risks, whether such organization is the DCO or its corporate parent or other affiliate. The Commission also requests comment as to whether a DCO's chief risk officer should be permitted to also serve as its enterprise risk officer.

B. Financial Resources—§ 39.11

Regulation 39.11 implements Core Principle B, which requires a DCO to possess financial resources that, at a minimum, exceed the total amount that would enable the DCO to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions and to cover its operating costs for a period of one year, as calculated on a rolling basis. The Commission is proposing to revise or clarify several aspects of § 39.11, including revising the language of § 39.11(a) to make it more consistent with Core Principle B.

1. Calculation of Largest Financial Exposure and Stress Tests—§ 39.11(a)(1), (c)(1) and (2).

Regulation 39.11(a)(1) requires a DCO to maintain financial resources sufficient to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions. Regulation 39.11(c)(1) requires a DCO to perform ''stress testing'' in order to determine the

[22] The term ''enterprise-wide'' is intended to require that the process of identifying, assessing, measuring, monitoring, and managing risk apply to the entire legal entity and its affiliates as a collective whole, with the objective to manage the risks to the DCO. A DCO would satisfy its obligations under paragraph (d)(1) (and paragraphs (d)(2) and (3), as discussed below) if it is part of a corporate group that has in place an enterprise risk management program that includes the DCO within its scope and complies with the requirements of this section.

[23] For example, § 39.11(a) requires a DCO to identify and adequately manage its general business risks; § 39.13(a) requires a DCO to ensure that it possesses the ability to manage the risks associated with discharging the responsibilities of the DCO through the use of appropriate tools and procedures; and § 39.13(b) requires a DCO to establish and maintain written policies, procedures, and controls which establish an appropriate risk management framework that, at a minimum, clearly identifies and documents the range of risks to which the DCO is exposed and addresses the monitoring and management of the entirety of those risks.

[24] In the interests of offering guidance to DCOs, however, the Commission notes that standards similar to those developed by the Committee of Sponsoring Organizations of the Treadway Commission or the International Organization for Standardization are currently among those that would reasonably be considered in the development of an enterprise risk management program. Although different standards may use different terminology for the same concept, these standards have some commonalities, such as the statement of risk appetite and the use of a risk register or logs to record any losses or risks above a given threshold. These standards are noted here to assist DCOs in identifying standards that they may wish to adopt or consider in designing and implementing their risk management frameworks; there may be other internationally-recognized standards that may be used in addition to or instead of the standards mentioned above. In the interests of transparency, a DCO should specify the standards or industry best practices it uses as part of its enterprise risk management program.

[25] The Commission is proposing to require that the DCO ''identify,'' rather than ''designate,'' the enterprise risk officer because, for certain corporate structures, the enterprise risk officer would most appropriately be an officer of a parent or other affiliate of the DCO. As a result, the DCO may not always be the entity that may properly ''designate'' the enterprise risk officer.

financial resources required to satisfy § 39.11(a)(1). As an initial matter, the Commission is proposing to change the wording to ''stress tests'' to use the term defined in § 39.2. This is not intended to change the meaning of § 39.11(c)(1).

Although § 39.11(c)(1) grants a DCO reasonable discretion in determining the methodology used to calculate its financial resources requirement, Commission staff has noted inconsistencies in how DCOs treat excess collateral on deposit when conducting stress tests. These inconsistencies lessen the usefulness of the stress tests. Accordingly, the Commission is proposing additional minimum requirements that a DCO would have to follow in determining its exposure in accordance with § 39.11(c)(1).

In particular, the Commission is proposing to add § 39.11(c)(2)(i)(A) [26] to require a DCO to calculate its largest financial exposure net of the clearing member's required initial margin amount on deposit. In other words, the DCO may not take into account excess collateral on deposit or initial margin required but not yet received. This would focus a DCO's analysis on the resources that would actually be available to the DCO during times of stress and is consistent with recent guidance issued by CPMI–IOSCO suggesting that when assessing the adequacy of their financial resources, CCPs should take into account only prefunded financial resources and ignore voluntary excess contributions.[27] Consistent with this change, the Commission is proposing to remove § 39.11(b)(1)(i), which permits margin to be used to satisfy the requirements of § 39.11(a)(1), because the required initial margin amount on deposit for the clearing member will be applied before determining the largest financial exposure for the DCO in extreme but plausible market conditions. Therefore, the margin would not be available to also cover the exposure.

Additionally, the Commission is proposing § 39.11(c)(2)(ii) to require that when stress tests produce losses in both customer and house accounts, a DCO must combine the customer and house stress test losses of each clearing member using the same stress test scenario.

Finally, the Commission is proposing several provisions designed to ensure customer funds are treated properly when a DCO is calculating its largest financial exposure. Proposed § 39.11(c)(2)(i)(B) would require a DCO to use customer initial margin only to the extent permitted by parts 1 and 22 of the Commission's regulations. Proposed § 39.11(c)(2)(iii) would clarify that when calculating its largest financial exposure, a DCO may net any gains in the house account with customer losses, if permitted by the DCO's rules; however, a DCO may not net losses in the house account with gains in the customer account. Proposed § 39.11(c)(2)(iv) would further clarify that, with respect to a clearing member's cleared swaps customer account, a DCO may net gains for one customer against losses for another customer only to the extent permitted by the DCO's rules.

2. Assessments—§ 39.11(d)(2)

Regulation 39.11(d)(2) sets out certain conditions that apply to a DCO's use of assessments for additional guaranty fund contributions in calculating the financial resources available to meet its obligations under § 39.11(a)(1). Regulation 39.11(d)(2)(iv) provides that the DCO shall only count the value of assessments, after a 30 percent haircut, ''to meet up to 20 percent of those obligations.'' The Commission has been advised that the phrase ''those obligations,'' which is a reference to the obligations discussed in the introductory language of § 39.11(d)(2), has created some uncertainty. Therefore, for clarity, the Commission is proposing to replace the phrase ''those obligations'' with ''the total amount required under paragraph (a)(1) of this section.''

3. Liquidity of Financial Resources—§ 39.11(e)

Regulation 39.11(e)(1)(ii) requires that the financial resources allocated by a DCO to meet the requirements of § 39.11(a)(1) (*i.e.,* its default resources) be sufficiently liquid to enable the DCO to fulfill its obligations as a central counterparty during a one-day settlement cycle. Regulation 39.11(e)(1)(ii) further requires that those resources include cash, U.S. Treasury obligations, or high quality, liquid, general obligations of a sovereign nation (*i.e.,* cash or cash equivalents), in an amount greater than or equal to the average of its clearing members' average pays over the last fiscal quarter.[28] If that amount is less than what a DCO needs to fulfill its obligations during a one-day settlement cycle, § 39.11(e)(1)(iii) permits a DCO to take into account a committed line of credit for the purpose of meeting the remainder of the requirement.

The Commission's intention was to require that at least a portion of a DCO's default resources be sufficiently liquid to enable the DCO to complete a one-day settlement cycle and that these liquid resources include a certain amount of cash or cash equivalents. Then, if the cash or cash-equivalent amount was not sufficient to meet the total one-day settlement cycle liquidity requirement, a DCO could use a committed line of credit to make up the difference.[29] Regulation 39.11(b)(1), however, which sets forth the types of financial resources that can be considered as default resources, does not expressly permit the use of a committed line of credit; [30] it does permit the use of ''[a]ny other financial resource deemed acceptable by the Commission.'' The result is that § 39.11(b)(1) only permits a DCO to use a committed line of credit as part of its default resources if ''deemed acceptable by the Commission,'' while § 39.11(e)(1)(iii) seems to permit a DCO to use a committed line of credit as part of its default resources up to the amount needed to satisfy the ''one-day settlement cycle'' liquidity requirement after cash or cash equivalents have been applied. Accordingly, the Commission is proposing § 39.11(e)(3) to clarify that a committed line of credit or similar facility is a permitted default resource up to the amount provided for in § 39.11(e)(1)(ii), provided, however, that it is not counted twice to meet the requirements of § 39.11(e)(1)(ii) and § 39.11(e)(2).[31] The Commission is also proposing clarifying changes to the text of § 39.11(e)(1)(iii) and (e)(2).

In addition, the Commission is proposing to change references to ''daily settlement pay'' in § 39.11(e)(1)(ii) to ''daily settlement variation pay'' in order to clarify that additional calls for

[26] The Commission is proposing to renumber current § 39.11(c)(2) as § 39.11(c)(3).

[27] *See* CPMI–IOSCO, Resilience of central counterparties: Further guidance on the PFMI (July 2017), Principles 4.2.4, 4.2.5, available at *https://www.bis.org/cpmi/publ/d163.pdf.*

[28] The Commission wishes to clarify that the cash, U.S. Treasury obligations, or high quality, liquid, general obligations of a sovereign nation required to be held under § 39.11(e)(1)(ii) do not have to be attributable to the DCO's own capital but can be attributable to any of the acceptable financial resources included in § 39.11(a)(1).

[29] *See* Financial Resources Requirements for Derivatives Clearing Organizations, 75 FR 63113, 63116 (Oct. 14, 2010) (proposed rule).

[30] In the notice of proposed rulemaking for § 39.11, the Commission noted that a committed line of credit or similar facility is not listed as a financial resource available to a DCO to satisfy the requirements of § 39.11(a)(1) and (2). The Commission further noted that a DCO may use a committed line of credit or similar facility only to meet the liquidity requirements set forth in § 39.11(e)(1) and (2). *Id. See also* Derivatives Clearing Organization General Provisions and Core Principles, 76 FR at 69350 (affirming this approach).

[31] The Commission is proposing to renumber current § 39.11(e)(3) as § 39.11(e)(4).

initial margin should not be included in the calculation.

4. Reporting Requirements—§ 39.11(f)

Regulation 39.11(f) sets forth reporting requirements for DCOs concerning the financial resources they are required to maintain pursuant to § 39.11(a). After § 39.11(f) was adopted, the Commission adopted §§ 39.33(a) and 39.39(d), which set forth financial resources requirements for SIDCOs and subpart C DCOs, and financial resources requirements for the recovery and wind-down plans of SIDCOs and subpart C DCOs, respectively. The Commission is proposing to amend several provisions of § 39.11(f) by adding the words ''and §§ 39.33(a) and 39.39(d), if applicable,'' to clarify that financial resources reporting by SIDCOs and subpart C DCOs should encompass all financial resources requirements applicable to them under part 39.

5. Financial Statements—§ 39.11(f)(1)(ii)

Regulation 39.11(f)(1)(ii) requires a DCO to file with the Commission each fiscal quarter, or at any time upon Commission request, a financial statement, including the balance sheet, income statement, and statement of cash flows, of the DCO or of its parent company. Since § 39.11(f)(1)(ii) was implemented, some DCOs have filed the financial statements of their parent companies. Because some of these DCOs are part of a complex corporate structure, Commission staff has had difficulty determining whether the entity covered by a particular financial statement is the true, direct parent of the relevant DCO, which, in turn, makes it difficult to accurately assess the financial strength of the DCO. Therefore, the Commission is proposing to revise § 39.11(f)(1)(ii) to require that the financial statement provided be that of the DCO and not the parent company.

In further regard to § 39.11(f)(1)(ii), the Commission has received many inquiries concerning the accounting standards that apply to the preparation of the DCO's financial statements. Generally, Commission regulations require financial statements to be prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP).[32] Therefore, the Commission would expect DCOs to provide financial statements prepared in accordance with U.S. GAAP. However, the Commission recognizes that DCOs organized outside the United States may prepare their financial statements in accordance with International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB), or pursuant to other country-specific accounting standards. The Commission has permitted commodity pool operators to file commodity pool financial statements prepared in accordance with IFRS if the pool is organized under the laws of a foreign jurisdiction, and certain other conditions are met.[33]

The Commission notes that the Securities and Exchange Commission (SEC) has adopted financial reporting requirements for securities clearing agencies that require U.S. GAAP, but permit the use of IFRS by clearing agencies that are ''incorporated or organized under the laws of any foreign country.'' [34] The SEC stated in its adopting release that it also recognizes the ''advantages of financial statement disclosure that are limited to more widely applied bases of accounting and may offer more utility to market participants, regulators, and other stakeholders of clearing agencies.'' [35] Therefore, it limited the different bases of accounting upon which annual audited financial statements may be prepared to IFRS and U.S. GAAP.[36]

The Commission therefore is proposing to revise § 39.11(f)(1)(ii) to clarify that the financial statement must be prepared in accordance with U.S. GAAP for DCOs incorporated or organized under U.S. law, and in accordance with either U.S. GAAP or IFRS issued by the IASB for DCOs incorporated or organized under the laws of any foreign country.

In reviewing DCOs' financial statements, Commission staff has noted that assets allocated by the DCO to meet the requirements of § 39.11(a)(1) or (2) often are not identified accordingly. The Commission therefore is proposing in § 39.11(f)(1)(ii) and (f)(2)(i) (discussed below) to require that assets allocated by the DCO for such purpose must be clearly identified on the DCO's balance sheet as held for that purpose.

In addition, the Commission is proposing to renumber current § 39.11(f)(2) as § 39.11(f)(1)(iv) and amend it to incorporate the language of current § 39.11(f)(4), which requires a DCO to submit its quarterly financial report no later than 17 business days after the end of the DCO's fiscal quarter or at a later time as permitted by the Commission in its discretion in response to a DCO's request for an extension.

6. Annual Reporting—§ 39.11(f)(2)

The Commission is proposing to revise § 39.11(f)(2) to set forth a DCO's annual financial reporting requirements (currently set forth in § 39.19(c)(3)(ii), which would also be revised) in the same way § 39.11(f)(1) sets forth a DCO's quarterly financial reporting requirements (which are cross-referenced in § 39.19(c)(2)).

In addition to its audited year-end financial statement, a DCO would be required to submit: (1) A reconciliation, including appropriate explanations, of its balance sheet when material differences exist between it and the balance sheet in the DCO's financial statement for the last quarter of the fiscal year or, if no material differences exist, a statement so indicating, and (2) such further information as may be necessary to make the statements not misleading. Commission staff has encountered situations in which significant discrepancies exist between a DCO's financial statements for the last quarter of its fiscal year and its audited year-end financial statement. There is often a simple explanation for this, *e.g.,* the discrepancies reflect a material change in a given foreign exchange rate. The Commission believes a reconciliation will help explain these discrepancies and will aid its review of the DCO's financial statements.

7. Documentation Requirements—§ 39.11(f)(3)

Current § 39.11(f)(3) requires a DCO to provide to the Commission certain documentation related to its quarterly financial reporting.[37] The Commission has determined that requiring this documentation each quarter is unnecessary where there is no change from the prior submission. Therefore, the Commission is proposing to revise § 39.11(f)(3) to clarify that a DCO must send the documentation to the Commission required under current paragraphs (f)(3)(i) and (ii) (proposed to be renumbered as paragraphs (f)(3)(i)(A) and (i)(B)) only upon the DCO's first submission under § 39.11(f)(1) and in the event of any change thereafter.

The Commission also is proposing to renumber § 39.11(f)(3)(iii), which concerns providing copies of agreements establishing or amending a credit facility, insurance coverage, or other arrangement, as § 39.11(f)(3)(ii),

[32] *See, e.g.,* §§ 1.10(d)(3), 4.22(d), and 38.1101(b)(1).

[33] *See* § 4.22(d)(2).

[34] 17 CFR 240.17Ad–22(c)(2)(ii).

[35] Clearing Agency Standards, 77 FR 66220, 66244 (Nov. 2, 2012) (final rule).

[36] *See id.*

[37] The documentation explains (1) the methodology used to compute financial resources requirements, and (2) the basis for the DCO's determinations regarding valuation and liquidity requirements.

and add language specifying that copies of the agreements should evidence or support the DCO's ability to meet applicable financial resources and liquidity resources requirements.

8. Certification—§ 39.11(f)(4)

After § 39.11 was adopted, the Division advised DCOs that the quarterly financial report required under paragraph (f) should be accompanied by a certification as to the accuracy of the report signed by the person responsible for the accuracy and completeness of the report.[38] Such certification is required for submission of annual chief compliance officer reports and Form 1–FR by FCMs, and is also appropriate in these circumstances.[39] The Commission is proposing to amend § 39.11(f)(4) to add this new requirement.

C. Participant and Product Eligibility—§ 39.12

Regulation 39.12 implements Core Principle C, which requires a DCO to establish admission and continuing eligibility standards for its members, as well as standards for determining the eligibility of agreements, contracts, or transactions submitted to the DCO for clearing. Several provisions in § 39.12 require a DCO to ''adopt'' or ''establish'' rules. The Commission is proposing to amend those provisions to require a DCO to ''have'' rules.[40]

Regulation 39.12(b)(2) provides that a DCO shall adopt rules providing that all swaps with the same terms and conditions are economically equivalent within the DCO. The Commission recognizes that some DCOs do not clear swaps and it was not the intention of the Commission to require DCOs that do not clear swaps to adopt the rules required under this provision. Therefore, the Commission is proposing to revise § 39.12(b)(2) so that it explicitly applies only to DCOs that clear swaps.

D. Risk Management—§ 39.13

Regulation 39.13 implements Core Principle D, which establishes risk management standards for DCOs. The Commission is proposing to clarify several aspects of § 39.13.

1. Risk Management Framework—§ 39.13(b)

Regulation 39.13(b) requires a DCO to establish and maintain written policies, procedures, and controls, approved by its board of directors, which establish an appropriate risk management framework. The introductory heading to this provision states that it is a ''[d]ocumentation requirement.'' The Commission is proposing to replace ''[d]ocumentation requirement'' with ''[r]isk management framework'' and is also proposing to replace the words ''establish and maintain'' with ''have and implement'' to make it clear that a DCO is not only required to have a documented risk management framework but to put it into action.

2. Limitation of Exposure to Potential Default Losses—§ 39.13(f)

Regulation 39.13(f) requires a DCO to limit its exposure to potential losses from clearing member defaults to ''ensure'' that the DCO's operations would not be disrupted and non-defaulting clearing members would not be exposed to unanticipated or uncontrollable losses. The Commission recognizes that a DCO cannot ensure protection from that which it cannot anticipate. Therefore, the Commission is proposing to replace ''ensure'' with ''minimize the risk'' and make conforming changes to paragraphs (f)(1) and (2) of § 39.13.

3. Margin Requirements—§ 39.13(g)

a. Methodology and Coverage—§ 39.13(g)(2)

Regulation 39.13(g)(2)(i) requires that a DCO have initial margin requirements that are commensurate with the risks of each product and portfolio, including any unusual characteristics of, or risks associated with, particular products or portfolios. The regulation currently notes that such risks ''include[ ] but [are] not limited to jump-to-default risk or similar jump risk.'' The Commission is proposing to amend § 39.13(g)(2)(i) to note that such risks also include ''concentration of positions.'' Recent events, including a significant loss from a default at a central counterparty outside of the Commission's jurisdiction, highlight the importance of addressing those risks.

b. Independent Validation—§ 39.13(g)(3)

Regulation 39.13(g)(3) requires that a DCO's systems for generating initial margin requirements, including its theoretical models, be reviewed and validated by a qualified and independent party on a regular basis. The provision further provides that the validation may be conducted by independent contractors or employees of the DCO, as long as they are not responsible for the development or operation of the systems and models being tested. The Commission is proposing to amend this provision to specify that ''on a regular basis'' means annually and to also permit employees of an affiliate of the DCO to conduct the validations. Based on experience since the provision was adopted, the Commission believes an annual validation is sufficient. The Commission also believes it is appropriate to permit employees of an affiliate of the DCO to conduct the validations because, as with independent contractors or employees of the DCO, the main concern is that they not be persons responsible for development or operation of the systems and models being tested.

c. Spreads and Portfolio Margins—§ 39.13(g)(4)

The Commission is amending § 39.13(g)(4) to substitute the phrase ''conceptual basis'' for the phrase ''theoretical basis'' in the discussion of spread margin. This change would not alter the meaning of the rule but would simply make the terminology consistent with that used in the other Commission regulations.[41]

d. Back Tests—§ 39.13(g)(7)

The Commission is proposing new § 39.13(g)(7)(iii) to clarify that, in conducting back tests of initial margin requirements, a DCO should compare portfolio losses only to those components of initial margin that capture changes in market risk factors.

e. Gross Customer Margin—§ 39.13(g)(8)(i)

Regulation 39.13(g)(8)(i) requires a DCO to collect initial margin on a gross basis for each clearing member's customer account(s). After the regulation was adopted, Division staff received several inquiries regarding whether the provision applied to intraday settlements as well as end-of-day settlements. In response, the Division advised DCOs that the provision requires a DCO to collect

[38] Memorandum to All Registered DCOs from Ananda Radhakrishnan, Director, Division of Clearing and Risk, June 7, 2012.

[39] *See* 17 CFR 39.10(c)(4)(ii) (requiring certification of annual reports by chief compliance officers); 17 CFR 1.10(d)(4) (requiring certification of financial reports submitted by FCMs and introducing brokers); *see also* 17 CFR 4.22(h) (requiring commodity pool operators to certify periodic and annual financial reports); 17 CFR 4.27(e)(1) (requiring commodity pool operators and commodity trading advisors to certify periodic reports).

[40] The Commission is also proposing to renumber paragraphs (a)(5)(i)(A) and (B) and (a)(5)(ii) of § 39.12(a)(5) as paragraphs (a)(5)(ii), (iii), and (iv), respectively.

[41] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636, 658 (Jan. 6, 2016).

customer initial margin on a gross basis during any settlement cycle (end-of-day or intraday) in which the DCO collects customer initial margin. The Division also asked DCOs to notify the Division, in writing, of any issues that could prevent a DCO from fully complying with this requirement.[42]

Although § 39.13(g)(8)(i) does not differentiate between end-of-day and intraday collections of customer initial margin, there are significant operational issues that may affect the ability of clearing members to accurately determine the positions of individual customers on an intraday basis with respect to certain types of transactions (*e.g.,* transfers, give-ups, and allocations of block orders) and with respect to certain types of market participants (*e.g.,* locals and high frequency traders). Therefore, intraday gross margin calculations may result in some clearing members being charged too much margin and others being charged too little margin, which could necessitate significant end-of-day adjustments.

Regulation 39.13(g)(8)(i) is premised upon the ability of a DCO to accurately determine the initial margin amounts that would be required for each individual customer if each individual customer were a clearing member. Accordingly, the Commission is proposing to amend § 39.13(g)(8)(i) to require a DCO to collect customer initial margin from its clearing members on a gross basis only during its end-of-day settlement cycle, in light of the operational issues that may arise intraday. However, the Commission strongly encourages DCOs to collect customer initial margin from their clearing members on a gross basis during any intraday settlement cycle in which the DCOs collect customer initial margin, if they are able to calculate the margin accurately. The Commission requests comment as to whether this is the correct approach or whether there are other alternatives that would address the collection of intraday gross margin.

Currently, § 39.13(g)(8)(i)(B) provides that for purposes of calculating the gross initial margin requirement for clearing members' customer accounts, to the extent not inconsistent with other Commission regulations, a DCO may require its clearing members to report the gross positions of each individual customer to the DCO, or it may permit each clearing member to report the sum of the gross positions of its customers to the DCO. Regulation 39.13(g)(8)(i)(C) further provides that for purposes of paragraph (g)(8), a DCO may rely, and may permit its clearing members to rely, upon the sum of the gross positions reported to the clearing members by each domestic or foreign omnibus account that they carry, without obtaining information identifying the positions of each individual customer underlying such omnibus accounts. In addition, § 39.19(c)(5)(iii) currently requires a DCO to file with the Commission, for each customer origin of each clearing member, the end-of-day gross positions of each beneficial owner, upon Commission request.

The Commission believes the ability to analyze positions at the customer level is a crucial element of an effective risk surveillance program. For example, a clearing member account that is composed of 1,000 customers each holding one contract poses substantially less financial risk to the clearing member and to the DCO than a clearing member account composed of one customer holding 1,000 contracts. The ability to identify those customers whose positions create the most risk to a DCO's clearing members would assist the Commission in determining whether adequate measures are in place to address those risks and whether the Commission needs to take proactive steps to see that those risks are mitigated.

When the part 39 regulations were adopted, the Commission determined to allow a DCO to permit its clearing members to report the sum of the gross positions of their customers to the DCO without obtaining information identifying the positions of each individual customer underlying such clearing members' omnibus accounts. The Commission also determined not to require routine reporting of end-of-day gross positions of each beneficial owner to the Commission, in part because of concerns about the difficulty that DCOs would have in obtaining this information.[43] Subsequently, however, the Commission adopted § 22.11(c), which requires FCMs to report customer information about swaps to DCOs.[44] Thus, for swaps, DCOs now have data that they did not have fully available to them at the time part 39 was adopted. Moreover, the Commission has established a reporting protocol for this data, which can be used for submitting futures data as well.

To avoid a potential regulatory gap, the Commission is proposing to require a DCO to have rules requiring its clearing members to report customer information about futures (as well as swaps) to DCOs. This will enable DCOs, in turn, to report this information to the Commission, as discussed further below with respect to the proposed amendment to § 39.19(c)(1)(i)(D). Specifically, the proposed amendments to § 39.13(g)(8)(i)(B) would require a DCO to have rules that require its clearing members to provide reports to the DCO each day setting forth end-of-day gross positions of each beneficial owner within each customer origin of the clearing member.[45]

f. Customer Initial Margin Requirements—§ 39.13(g)(8)(ii)

Regulation 39.13(g)(8)(ii) provides that a DCO must require its clearing members to collect customer initial margin from their customers, ''for non-hedge positions, at a level that is greater than 100 percent of the [DCO]'s initial margin requirements with respect to each product and swap portfolio.'' Historically, DCMs had set customer initial margin requirements for their FCM members,[46] and the Commission stated that this provision simply shifts the responsibility for establishing customer initial margin requirements from DCMs to DCOs.[47] The Commission also noted its belief that requiring an FCM to collect higher customer initial margin for ''non-hedge positions'' provides a valuable cushion of readily available customer margin collateral.[48]

After § 39.13(g)(8)(ii) was adopted, the Division issued interpretative guidance addressing several aspects of the regulation in response to a request from Chicago Mercantile Exchange, Inc. (CME), a registered DCO.[49] The Commission is proposing to amend § 39.13(g)(8)(ii) in a manner consistent

[42] Memorandum to All Registered DCOs from Ananda Radhakrishnan, Director, Division of Clearing and Risk, July 19, 2012.

[43] Derivatives Clearing Organization General Provisions and Core Principles, 76 FR at 69375, 69400.

[44] Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, 77 FR 6336, 6376 (Feb. 7, 2012) (codified at 17 CFR 22).

[45] In this regard, the Commission is also proposing to amend § 39.13(g)(8)(i)(B) by changing ''may'' to ''shall,'' deleting ''to the extent not inconsistent with other Commission regulations'' and ''or it may permit each clearing member to report the sum of the gross positions of its customers to the derivatives clearing organization,'' deleting paragraph (C), and renumbering paragraphs (D) and (E).

[46] The Commission is proposing to amend § 39.13(g)(8)(ii) and (iii) to clarify that these provisions apply to FCM clearing members only.

[47] Derivatives Clearing Organization General Provisions and Core Principles, 76 FR at 69377.

[48] *Id.* at 69378.

[49] CFTC Letter No. 12–08 (Sept. 14, 2012); *see also* Letter from Lisa Dunsky, Executive Director and Associate General Counsel, Chicago Mercantile Exchange Inc., to Ananda Radhakrishnan, Director, Division of Clearing and Risk (Aug. 29, 2012).

with the interpretative guidance provided in the Division's letter, as discussed further below.

In its request, CME asked for clarification as to the meaning of the term ''non-hedge positions.'' CME explained that DCM requirements for collection of higher customer initial margin had been applied historically on an account, rather than a position, basis. Under existing rules or practices at various DCMs, exchange members, market makers, market professionals, and certain other categories of customers had been subject to the clearing initial margin requirement; *i.e.,* such exchange member accounts were designated as ''hedge'' or ''member,'' and by virtue of this designation, received the lower clearing initial margin rate, even though there may have been speculative positions in the accounts.

CME also inquired as to the applicability of § 39.13(g)(8)(ii) to non-clearing FCM customer omnibus accounts at clearing FCMs. CME stated that a non-clearing FCM's customer omnibus account may be comprised of both hedge accounts and speculative accounts, and the clearing FCM typically did not know the identity of the underlying customers in a non-clearing FCM's omnibus account. The non-clearing FCM sets customer initial margin requirements based on whether a customer account is designated as ''hedge'' or ''speculative.'' Thus, a speculative account included within an omnibus account already would have been assessed the higher customer initial margin requirement by such customer's non-clearing FCM. If the clearing FCM were required to apply the higher customer initial margin rate to the entire customer omnibus account, this would require the non-clearing FCM to either (1) post more collateral with the clearing FCM than the amount actually collected from its hedge customers in the omnibus account, or (2) collect the higher customer initial margin requirement from its hedge customers so that it could post this collateral with the clearing FCM.

In its response to CME's request, the Division stated that it interprets § 39.13(g)(8)(ii) ''in a manner that preserves the historical customer margining practices applicable to FCMs . . . [noting that] FCMs are expected to continue the practice of collecting customer initial margin at a level higher than the minimum required, if such action is warranted based on the unique risk profile of an individual customer.'' The Commission agrees with such interpretation and accordingly, is proposing to revise § 39.13(g)(8)(ii) to permit DCOs to continue the practice of establishing customer initial margin requirements based on the type of customer account and by applying prudential standards that result in FCMs collecting customer initial margin at levels commensurate with the risk presented by each customer account.

The Commission therefore proposes to amend § 39.13(g)(8)(ii) by deleting the reference to ''non-hedge'' positions, changing the reference to ''a level that is greater than 100 percent'' to ''a level that is not less than 100 percent,'' clarifying that the customer initial margin level is measured against ''clearing'' initial margin requirements, and explicitly stating that customer initial margin levels must be ''commensurate with the risk presented by each customer account.''

The Commission believes that establishing a bright-line test to determine the appropriate percentage by which customer initial margin requirements must exceed clearing initial margin requirements with respect to any particular types of customer accounts is inappropriate because the circumstances for each DCO and the nature of its clearing members and their customers vary. In adopting § 39.13(g)(8)(ii), the Commission noted that the percentage ''should be based on the nature and volatility patterns of the particular product or swap portfolio, and the DCO's related evaluation of the potential risks posed by customers in general to their clearing members and, in turn, the potential risks posed by such clearing members in general to the DCO, rather than the creditworthiness of particular customers.'' [50] The Commission requests comment as to whether it should add standards or further direction in § 39.13(g)(8)(ii), or provide guidance to further clarify what would be considered ''commensurate with the risk presented,'' similar to the Commission's statement in the adopting release noted above.

The Commission is proposing to amend the language in § 39.13(g)(8)(ii) that gives the DCO reasonable discretion in determining the percentage by which customer initial margin requirements must exceed the DCO's clearing initial margin requirements with respect to particular products or portfolios, by replacing ''the percentage by which'' with ''whether and by how much.'' However, the proposed amendments to § 39.13(g)(8)(ii) would give the Commission the ability to require different customer initial margin levels if the Commission deems the levels insufficient to protect the financial integrity of the DCO or its clearing members. Since the adoption of § 39.13(g)(8)(ii), DCOs have typically added a 10 percent increase to the clearing initial margin requirement to set the higher customer initial margin requirement. The Commission has generally found this to be adequate in ordinary market conditions.

g. Haircuts—§ 39.13(g)(12)

Regulation 39.13(g)(12) requires a DCO to apply appropriate reductions in value to reflect credit, market, and liquidity risks (haircuts), to the assets that it accepts in satisfaction of initial margin obligations. This provision also requires a DCO to evaluate the appropriateness of the haircuts ''on at least a quarterly basis.'' Regulation 39.11(d)(1) requires that haircuts be evaluated on a monthly basis for assets that are used to meet the DCO's financial resources obligations set forth in § 39.11(a). The Commission is proposing to amend § 39.13(g)(12) to align it with § 39.11(d)(1) by requiring that DCOs evaluate the appropriateness of the haircuts that they apply to assets accepted in satisfaction of initial margin obligations on a monthly basis. Given that initial margin is held for risk management purposes, and the value of these assets change frequently, the Commission believes it would be more appropriate to assess haircuts more frequently.

4. Other Risk Control Mechanisms—§ 39.13(h)

a. Risk Limits—§ 39.13(h)(1)

Regulation 39.13(h)(1)(i) requires a DCO to impose risk limits on each clearing member, by house origin and by each customer origin, in order to prevent a clearing member from carrying positions for which the risk exposure exceeds a specified threshold relative to the clearing member's and/or the DCO's financial resources. The Commission is proposing to clarify that such risk limits should also be imposed to address positions that may be difficult to liquidate. This might be the case, for example, in instances where a position in a particular contract or swap is concentrated with a particular member, such that there is reason to doubt whether, in the event that this member defaults, other members would be willing and able to accept, collectively, the entirety of that position or swap. As noted above, in section IV.D.3.a, recent events highlight the importance of imposing risk limits to address positions that may be difficult

[50] Derivatives Clearing Organization General Provisions and Core Principles, 76 FR at 69378.

to liquidate, particularly concentrated positions.

b. Clearing Members' Risk Management Policies and Procedures—§ 39.13(h)(5)

Regulation 39.13(h)(5)(ii) requires a DCO to, on a periodic basis, review the risk management policies, procedures, and practices of each of its clearing members, which address the risks that such clearing members may pose to the DCO, and to document such reviews. The Commission is proposing to clarify that DCOs should, having conducted such reviews, ''take appropriate actions to address concerns identified in such reviews,'' and that the documentation of the reviews should include ''the basis for determining what action was appropriate to take.'' The Commission notes that, where a DCO is required to conduct any type of review under Commission regulations, similar remediation and documentation is expected. Absent such follow-up, the reviews would lack purpose.

5. Cross-Margining Arrangements—§ 39.13(i)

A cross-margining arrangement allows a DCO to provide offsets or reductions in required margin between products that it and another DCO (or other clearing organization) clear if the risk of one product is significantly and reliably correlated with the risk of the other product. The Commission approved the first cross-margining arrangement in 1988, and it has approved many such arrangements since.[51] Proposed § 39.13(i) would codify the Commission's existing practices for evaluating cross-margining arrangements.[52]

In evaluating cross-margining arrangements, the Commission reviews: (1) The methodology to be used to calculate margin requirements for the positions subject to the cross-margining arrangement; (2) the correlation between the positions, including the stability of the relationship among the eligible products and the potential impact a change in the correlation could have on setting margin requirements; (3) the impact on the settlement process; and (4) the application of default procedures, including any loss-sharing arrangements, pursuant to the proposed arrangement. If only one of the clearing organizations participating in the arrangement is a registered DCO, the Commission looks at additional factors, including the other clearing organization's status with and oversight by other regulator(s). Also, if one of the clearing organizations is organized outside of the United States, the Commission evaluates the bankruptcy treatment in that clearing organization's jurisdiction. Finally, the Commission considers the impact of the cross-margining arrangement, if any, on the DCO's ability to comply with the DCO Core Principles, particularly those concerning financial resources and risk management. The Commission requests comment as to whether there are other factors the Commission should consider and, therefore, other information that it should request. The Commission is proposing to require a DCO to provide the relevant information needed to facilitate its review as part of a rule filing submitted for Commission approval pursuant to § 40.5. The Commission requests comment as to whether this would be the appropriate process or whether a more or less detailed review process is appropriate given the factors and risks involved.

E. Treatment of Funds—§ 39.15

Regulation 39.15 implements Core Principle F, which requires a DCO to establish standards and procedures designed to protect its clearing members' funds, hold such funds in a manner that would minimize the risk of loss or delay in the DCO's access, and invest such funds in instruments with minimal credit, market, and liquidity risks. The Commission is proposing to amend certain aspects of § 39.15.

1. Segregation of Customer Funds—§ 39.15(b)(1)

Regulation 39.15(b)(1) requires a DCO to comply with the applicable segregation requirements of section 4d of the CEA and Commission regulations thereunder, or any other applicable Commission regulation or order requiring that customer ''funds and assets'' be segregated, set aside, or held in a separate account. Section 4d of the CEA refers to customer ''money, securities and property.'' Therefore, the Commission is proposing to amend § 39.15(b) to clarify that ''funds and assets'' are equivalent to ''money, securities, and property'' in order to better align the language of the regulation with the language in the statute.

2. Commingling in Cleared Swaps Customer Account—§ 39.15(b)(2)(i)

Regulation 39.15(b)(2)(i) requires a DCO to file rules for Commission approval pursuant to § 40.5 in order for the DCO and its clearing members to commingle customer positions in futures, options, and swaps, and any money, securities, or property received to margin, guarantee or secure such positions, in an account subject to the requirements of section 4d(f) of the CEA (*i.e.,* the cleared swaps customer account). The Commission is proposing to revise § 39.15(b)(2)(i) to clarify that a DCO that wants to commingle foreign futures and foreign options with swaps must meet the same requirements.

3. Commingling in Futures Customer Account—§ 39.15(b)(2)(ii)

Regulation 39.15(b)(2)(ii) requires a DCO to file a petition for an order pursuant to section 4d(a) of the CEA in order for the DCO and its clearing members to commingle customer positions in futures, options, and swaps, and any money, securities, or property

[51] The Commission has issued a number of cross-margining program orders, including, but not limited to: A June 1, 1988 order approving a proprietary cross-margining system between the Intermarket Clearing Corporation (ICC) and Options Clearing Corporation (OCC), as expanded by a November 26, 1991 order approving the addition of cross-margining of positions of market professionals in non-proprietary accounts of participating clearing members to the ICC/OCC cross-margining program, 56 FR 61406 (Comm. F. T. Comm'n Dec. 3, 1991), and as further amended by a January 22, 1996 order to incorporate the provisions of appendix B, Framework 1 to the Commission's part 190 Regulations; a September 26, 1989 order approving a proprietary cross-margining system between OCC and CME, as expanded by a November 26, 1991 order approving the addition of cross-margining of positions of market professionals in non-proprietary accounts of participating clearing members to the OCC/CME cross-margining program, 56 FR 61404 (Comm. F. T. Comm'n Dec. 3, 1991); a June 2, 1993 order approving the proposals of CME and ICC to implement a tri-lateral cross-margining program with OCC, as further amended by a January 22, 1996 amended order to reflect the approval of proposed changes to the CME/ICC/OCC cross-margining amendments for proprietary and market professional accounts to incorporate the provisions of appendix B, Framework 1 to the Commission's part 190 Regulations; a November 5, 2004 order approving the establishment of an internal cross-margining program that permits cross-margining of positions of market professionals in internal non-proprietary accounts of OCC clearing members; and a February 29, 2008 order approving the establishment of a non-proprietary cross-margining agreement between the OCC and ICE Clear US, Inc. The Commission has also allowed cross-margining programs into effect without Commission approval including, but not limited to, a proprietary cross-margining program between CME and the London Clearing House (allowed into effect without approval on March 23, 2000).

[52] In February 2015, CPMI–IOSCO issued a Level 2 assessment report on implementation of the PFMIs by CCPs and trade repositories in the U.S. (Implementation Report). *See* CPMI–IOSCO, Implementation monitoring of PFMIs: Level 2 assessment report for central counterparties and trade repositories—United States (Feb. 2015), available at *http://www.bis.org/cpmi/publ/d126.pdf.* The Implementation Report noted that Commission regulations do not explicitly address cross-margining, and in particular, the risk management requirements necessary where two or more CCPs participate in cross-margining arrangements. The Commission notes that existing DCO Core Principles and regulations regarding risk management, treatment of customer funds, default and settlement procedures, taken as a whole, address cross-margining arrangements.

received to margin, guarantee or secure such positions, in an account subject to the requirements of section 4d(a) of the CEA. The Commission is proposing to revise § 39.15(b)(2)(ii) to clarify that a DCO that wants to commingle foreign futures and foreign options with futures and options must meet the same requirements as a DCO that wants to commingle swaps with futures and options.

Further, when § 39.15(b)(2)(ii) was first promulgated, the Commission, in reference to its decision to require an order rather than a rule approval to commingle cleared swaps with futures in a futures account, stated ''at this time, it is appropriate to provide these additional procedural protections before exposing futures customers to the risks of swaps that may be commingled in a futures account.'' [53] The Commission, however, acknowledged that ''as the Commission and the industry gain more experience with cleared swaps, the Commission may revisit this issue in the future.'' [54] The Commission now believes that a request for a rule approval that complies with § 40.5 will provide the Commission with sufficient means to determine whether customer funds held in a futures account will be adequately protected if cleared swaps, foreign futures, or foreign options are also held in the account.

Therefore, the Commission is proposing to revise § 39.15(b)(2)(ii) to require a DCO to file rules for Commission approval pursuant to § 40.5 in order for the DCO and its clearing members to commingle swaps, foreign futures, or foreign options with futures and options in an account subject to the requirements of section 4d(a) of the CEA.

4. Commission Action—§ 39.15(b)(2)(iii)

Regulation 39.15(b)(2)(iii) provides that the Commission may ''grant approval of'' a rule submission filed under § 39.15(b)(2)(i) in accordance with § 40.5. The Commission is proposing to replace the words ''grant approval of'' with ''approve'' in order to be consistent with the language used in § 40.5(b). Further, the Commission is proposing to amend § 39.15(b)(2)(iii) to reflect the proposed changes to § 39.15(b)(2)(ii). Specifically, the Commission is proposing to eliminate § 39.15(b)(2)(iii)(A) and (B) and include the content of both paragraphs within § 39.15(b)(2)(iii).

5. Transfer of Customer Positions—§ 39.15(d)

Regulation 39.15(d) requires a DCO to have rules providing for the prompt transfer of all or a portion of a customer's portfolio of positions and related funds at the same time from the carrying clearing member to another clearing member, without requiring the close-out and re-booking of the positions prior to the requested transfer.

Some DCOs have noted that, although a DCO may transfer positions from one clearing member to another, the DCO does not generally transfer funds. The DCO simply adjusts the amount of margin due from, or owed to, each clearing member during the next collection cycle. Moreover, the receiving clearing member may not owe additional funds if it has sufficient excess margin funds on deposit at the DCO. The DCO may only transfer funds if it has already collected variation margin from the transferring clearing member and positions were transferred at the trade price. In addition, any excess margin held by the transferring clearing member would be transferred to the receiving clearing member.

Accordingly, the Commission is proposing to amend § 39.15(d) to delete the words ''at the same time,'' thus requiring the ''prompt,'' but not necessarily simultaneous, transfer of a customer's positions and related funds. The Commission is further amending the provision to require the transfer of related funds ''as necessary,'' recognizing that the transfer of customer positions will not always require the transfer of funds.

6. Permitted Investments—§ 39.15(e)

Regulation 39.15(e) requires any investment of customer funds or assets by a DCO to comply with § 1.25, as if all such funds and assets comprise customer funds subject to segregation pursuant to section 4d(a) of the CEA and Commission regulations thereunder. At the time § 39.15(e) was adopted, the Commission had not yet adopted regulations concerning cleared swaps customer funds but intended for § 39.15(e) to also apply to those funds. The Commission has since adopted the part 22 regulations and therefore is proposing to amend § 39.15(e) to clarify that the requirement applies to any investment of customer funds or assets, including cleared swaps customer collateral as defined in § 22.1.

F. Default Rules and Procedures—§ 39.16

Regulation 39.16 codifies Core Principle G, which requires a DCO to have rules and procedures designed to allow for the efficient, fair, and safe management of events during which a clearing member becomes insolvent or otherwise defaults on its obligations to the DCO. Core Principle G also requires a DCO to clearly state its default procedures, make its default rules publicly available, and ensure that it may take timely action to contain losses and liquidity pressures while continuing to meet its obligations. The Commission is proposing to amend certain aspects of § 39.16.[55]

1. Default Management Plan—§ 39.16(b)

Regulation 39.16(b) requires a DCO to have a default management plan and, among other things, test the plan at least on an annual basis. A DCO's default management plan involves its clearing members, so the Commission believes the plan cannot be tested effectively without the clearing members' participation. Accordingly, the Commission is proposing to amend § 39.16(b) to add a requirement that the DCO include clearing members in a test of its default management plan on at least an annual basis. A DCO should ensure that a sufficient portion of its clearing membership participates in such testing and is therefore prepared to support the DCO's default management efforts.

2. Default Procedures—§ 39.16(c)

Regulation 39.16(c) requires a DCO to adopt procedures that would permit the DCO to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a default by one if its clearing members. The Commission is proposing to amend § 39.16(c)(1) to require a DCO to have a default committee that would be convened in the event of a default involving substantial or complex positions to help identify market issues with any action the DCO is considering. The default committee would be required to include clearing members and could include other participants to help the DCO efficiently manage the house or customer positions of the defaulting clearing member.

The Commission also is proposing to amend § 39.16(c)(2)(ii) to require that a DCO have default procedures that include immediate public notice on the DCO's website of a declaration of default. The Commission believes it is important to the integrity and stability of the financial markets that clearing members, other CCPs, and the public

[53] Derivatives Clearing Organization General Provisions and Core Principles, 76 FR at 69392.

[54] *Id.*

[55] The proposed amendments to § 39.16 include replacing ''adopt'' with ''have'' where a DCO is required to adopt rules, consistent with the proposed changes to § 39.12 previously discussed.

become aware as soon as possible when a default has occurred. The Commission requests comment, however, as to whether the timing of the announcement would potentially impact the market or the DCO's ability to manage the default.

Finally, § 39.16(c)(2)(iii)(C) requires any allocation of a defaulting clearing member's positions to be proportional to the size of the participating or accepting clearing member's positions in the same product class at the DCO. The Commission is proposing to amend this provision to clarify that the DCO shall not require a clearing member to bid for a portion of, or accept an allocation of, the defaulting clearing member's positions that is not proportional to the size of the bidding or accepting clearing member's positions in the same product class at the DCO. This is intended to clarify that a clearing member that wishes to voluntarily bid for or accept more than its proportional share should be allowed to do so, provided that the clearing member has the ability to manage the risk of the new positions.

The Commission is proposing to further amend § 39.16(c)(2)(iii)(C) in order to clarify that the provision applies to both auctions and allocations and to provide that the size of the participating or accepting clearing member's positions in the same product class at the DCO should be measured by the clearing initial margin requirement for those positions. The Commission requests comment as to whether the Commission should require DCOs to take into consideration other indicators of active participation in a market, such as open interest, volume, and/or other criteria.

G. Rule Enforcement—§ 39.17

Regulation 39.17(a) codifies Core Principle H, which requires a DCO to maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and dispute resolution. Core Principle H also requires a DCO to have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant if it violates the DCO's rules. Finally, Core Principle H requires a DCO to report its rule enforcement activities and sanctions imposed on members and participants to the Commission. The Commission is proposing to amend § 39.17(a)(1) to clarify the Commission's expectation that DCOs currently do, and will continue to, ensure that both the DCO and its members comply with the DCO's rules.

Regulation 39.17(b) permits a DCO's board of directors to delegate its responsibility for compliance with the requirements of § 39.17(a) to the DCO's risk management committee. The Commission recognizes that some DCOs delegate such responsibility to a committee other than the risk management committee. Therefore, the Commission is proposing to amend § 39.17(b) to replace ''risk management committee'' with ''an appropriate committee.''

H. Reporting—§ 39.19

Regulation 39.19 implements Core Principle J, which requires that each DCO provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the DCO. In addition to clarifying existing requirements, the Commission is proposing to adopt additional reporting requirements that would allow the Commission to conduct more effective oversight of DCO compliance with the DCO Core Principles and Commission regulations.

1. General—§ 39.19(a)

The Commission is proposing to revise the text of § 39.19(a) to match the text of Core Principle J. The proposed revisions are not meant to alter the meaning of the provision.

2. Submission of Reports—§ 39.19(b)

Regulation 39.19(b)(1) requires a DCO to submit the information required by the section to be submitted to the Commission electronically and in a format and manner specified by the Commission, unless otherwise specified by the Commission or its designee. The Commission is proposing to delete ''[u]nless otherwise specified by the Commission or its designee'' and ''electronically,'' requiring a DCO to submit the information in a format and manner specified by the Commission. This would simplify the text while retaining the flexibility the Commission originally intended. The Commission is proposing new § 39.19(b)(2) to require that when making a submission pursuant to the section, an employee of a DCO must certify that he or she is duly authorized to make such a submission on behalf of the DCO. This provision would codify existing practices with respect to the use of the CFTC Portal for submissions pursuant to § 39.19. Finally, the Commission is proposing to remove existing § 39.19(b)(3) and move the definition of ''business day'' to § 39.2, as previously discussed. Existing § 39.19(b)(2) would be renumbered as § 39.19(b)(3).

3. Daily Reporting of Information—§ 39.19(c)(1)(i)

Regulation 39.19(c)(1)(i) requires a DCO to report to the Commission on a daily basis margin, cash flow, and position information for each clearing member, by house origin and by each customer origin. The Commission is proposing to amend § 39.19(c)(1)(i) to require a DCO to additionally report margin, cash flow, and position information by individual customer account, which is information the DCOs currently provide. The Commission is specifying ''individual customer account,'' as individual customers may have multiple accounts, which should be reported separately. The Commission is also proposing to have DCOs provide any legal entity identifiers and internally-generated identifiers within each customer origin for each clearing member. The Commission is also proposing to amend § 39.19(c)(1)(i)(D) to specify that, with respect to end-of-day positions, DCOs must report the positions themselves (*i.e.,* the long and short positions) as well as risk sensitivities and valuation data for these positions.

Risk-sensitivities are different measures of the impact of changes in underlying factors on the value of the positions. For example, an interest rate delta describes the theoretical profit or loss (''P&L'') that results from a one basis point increase in a currency's interest rate curve. A delta ladder describes a series of sensitivities for different maturity points (tenors) where each ''rung'' represents an increasing maturity point or tenor along the zero rate curve term structure. Each value on the rung represents the P&L that the portfolio would experience if the interest rate for that tenor were to increase by one basis point, all else being equal. Thus, if the entire curve were to shift up by one basis point, the portfolio's theoretical P&L would be equal to the sum of all the individual sensitivities. In the context of options, examples of risk sensitivities would be the different Greeks—delta measures an option's price sensitivity relative to changes in the price of the underlying asset, gamma measures the sensitivity of delta in response to price changes in the underlying instrument, vega measures an option's sensitivity to changes in the volatility of the underlying, theta measures the time decay of an option.

Valuation data refer to variables and inputs that reflect current market conditions, as well as expectations for the future. In the case of credit default swaps, valuation models rely on for example, risk neutral default

probabilities of swaps, forward credit spreads for different maturities. For interest rate swaps, valuation models require discount factors.

The Commission intends to implement a range of different methodologies to conduct risk surveillance of cleared derivatives exposures, some involving full revaluation of portfolios and others relying on delta ladders and other risk sensitivities. Collectively, the enhanced information sets will enable Commission staff to run stress tests; identify concentration and risk in currencies and in maturity buckets; perform back testing; validate guaranty funds; and validate variation margin.

4. Daily Reporting on Securities Positions—§ 39.19(c)(1)(ii)(C)

Regulation 39.19(c)(1)(i) requires DCOs to submit certain information to the Commission on a daily basis, *e.g.,* initial margin requirements, initial margin on deposit, daily variation margin, other daily cash flows such as option premiums, and end-of day positions. Paragraph (c)(1)(ii)(C) further instructs DCOs to provide the required information for all securities positions that are held in a customer account subject to section 4d of the CEA or are subject to a cross-margining agreement. Paragraph (c)(1)(ii)(C) was added to clarify the applicability of daily reporting requirements to securities positions carried by FCMs that are also registered broker-dealers.

Since the adoption of § 39.19(c)(1), the Commission has become aware of a potential ambiguity in the wording of paragraph (c)(1)(ii)(C), which requires the reporting of all securities positions ''that are held in a customer account subject to section 4d of the Act or are subject to a cross-margining agreement.'' The ambiguity concerns whether the reporting requirement for securities positions subject to a cross-margining agreement applies to customer positions only or to any position subject to a cross-margining agreement, whether house or customer.

Reporting of securities positions is designed to capture positions that could have an impact on the risks a DCO must manage. Because risks associated with securities positions subject to a cross-margining agreement would be relevant to the DCO's risk management function and therefore the Commission's risk surveillance program, all such securities positions, whether house or customer, were intended to be included in daily reporting. In order to avoid ambiguity and more precisely articulate the scope of paragraph (c)(1)(ii)(C), the Commission is proposing to insert subordinate paragraph numbering between the clauses in paragraph (c)(1)(ii)(C) which relate to securities positions held in a customer account or subject to a cross-margining agreement.

5. Quarterly Reporting—§ 39.19(c)(2)

Regulation 39.19(c)(2) requires a DCO to provide the financial resources report required by § 39.11(f). The Commission adopted § 39.19(c)(2) so that each DCO reporting requirement would be included in § 39.19. The Commission is proposing to revise the text of § 39.19(c)(2) to be more consistent with the text of § 39.11(f); *i.e.,* a DCO would be required to provide to the Commission each fiscal quarter, or at any time upon Commission request, a report of the DCO's financial resources as required by § 39.11(f)(1).

6. Audited Year-End Financial Statements—§ 39.19(c)(3)(ii)

Regulation 39.19(c)(3)(ii) requires a DCO to file with the Commission its audited year-end financial statements or, if there are no financial statements available for the DCO, the consolidated audited year-end financial statements of the DCO's parent company. As with the quarterly filing requirements of § 39.11(f)(1)(ii), the purpose of requiring a DCO to submit year-end financial statements is to enable the Commission to assess the financial strength of the DCO. However, if a DCO is part of a large and complex corporate structure and files its parent company's financial statements, it can be difficult for the Commission to assess the financial strength of the DCO itself. Therefore, the Commission is proposing to amend § 39.19(c)(3)(ii) to require the audited year-end financial statements of the DCO.

7. Time of Report—§ 39.19(c)(3)(iv)

Regulation 39.19(c)(3)(iv) requires a DCO to submit concurrently to the Commission all reports required by paragraph (c)(3) not more than 90 days after the end of the DCO's fiscal year. The Commission may provide an extension of time only if it determines that a DCO's failure to submit the report in a timely manner ''could not be avoided without unreasonable effort or expense.'' [56] The Commission is proposing to eliminate this requirement to provide it with the flexibility to grant extensions under additional circumstances when appropriate.

Additionally, the Commission is proposing to remove the requirement that reports be submitted concurrently in order to provide DCOs with the flexibility to submit reports required under § 39.19(c)(3) as they are completed. The Commission recognizes that one report may be completed sooner than the other and believes it would benefit the Commission's oversight of the DCO if the Commission could begin reviewing the report as soon as it is ready.

8. Decrease in Financial Resources—§ 39.19(c)(4)(i)

The Commission is proposing a technical amendment to § 39.19(c)(4)(i), which concerns reporting of a decrease in a DCO's financial resources. The amendment would add a reference to the financial resources requirements of § 39.33, which applies to SIDCOs and subpart C DCOs. The Commission also is proposing to renumber the subordinate paragraphs for the sake of clarity.

9. Decrease in Liquidity Resources—§ 39.19(c)(4)(ii)

The Commission is proposing to adopt new § 39.19(c)(4)(ii),[57] which would require the same reporting for a decrease in liquidity resources as that required by § 39.19(c)(4)(i) for a decrease in overall financial resources. The reporting required in § 39.11(f)(1)(ii) provides the Commission with notice of any change in a DCO's liquidity resources over the course of a fiscal quarter. This new provision would provide the Commission with notice if a DCO has a significant decrease in liquidity resources over a short period of time, which could indicate there is a greater issue of which the Commission should be aware.

10. Request to Clearing Member To Reduce Positions—§ 39.19(c)(4)(vi)

The Commission is proposing to amend current § 39.19(c)(4)(v), proposed to be renumbered as § 39.19(c)(4)(vi), which requires a DCO to notify the Commission immediately of a request by the DCO to one of its clearing members to reduce the clearing member's positions, by deleting the words ''because the [DCO] has determined that the clearing member has exceeded its exposure limit, has failed to meet an initial or variation margin call, or has failed to fulfill any other financial obligation to the [DCO].'' The Commission believes it should be

[56] The Commission delegated this authority to the Director of the Division of Clearing and Risk under § 140.94(c)(9).

[57] The Commission is proposing to renumber existing § 39.19(c)(4)(ii) and all subsequent paragraphs of § 39.19(c)(4).

notified of such a request regardless of the reason for the request.

11. Change in Key Personnel—§ 39.19(c)(4)(x)

The Commission is proposing to amend current § 39.19(c)(4)(ix), proposed to be renumbered as § 39.19(c)(4)(x), which requires a DCO to report to the Commission no later than two business days following the departure or addition of persons who are key personnel as defined in § 39.2. The Commission proposes to clarify that the notification requirement applies to both temporary and permanent replacements, and that the report must include contact information.

12. Change in Legal Name—§ 39.19(c)(4)(xi)

The Commission is proposing to adopt new § 39.19(c)(4)(xi), which would require a DCO to report a change to the legal name under which it operates. This requirement would help to ensure that DCO-specific information reflected on the Commission's website, as well as in the Commission's internal records, is accurate and up-to-date. The Commission notes, however, that the DCO's registration order (and other existing orders issued by the Commission) would not need to be changed to reflect the legal name change.

13. Change in Liquidity Funding Arrangement—§ 39.19(c)(4)(xiii)

The Commission is proposing to adopt new § 39.19(c)(4)(xiii), which would require a DCO to report a change in any liquidity funding arrangement it has in place. This requirement would be similar to that of § 39.19(c)(4)(x) (proposed to be renumbered as § 39.19(c)(4)(xii)), which requires a DCO to report any change in a credit facility funding arrangement it has in place. This will assist the Commission in overseeing the liquidity risk management of DCOs.

14. Change in Settlement Bank Arrangements—§ 39.19(c)(4)(xiv)

The Commission is proposing to adopt new § 39.19(c)(4)(xiv), which would require a DCO to report a change in its arrangements with any settlement bank used by the DCO or approved for use by the DCO's clearing members. Receiving such reporting will aid the Commission in monitoring a DCO's compliance with § 39.14(c), which sets forth specific requirements for settlement arrangements.

15. Settlement Bank Issues—§ 39.19(c)(4)(xv)

The Commission is proposing to adopt new § 39.19(c)(4)(xv), which would require a DCO to report to the Commission no later than one business day after learning of any material issues or concerns regarding the performance, stability, liquidity, or financial resources of any settlement bank used by the DCO or approved for use by the DCO's clearing members.

16. Change in Depositories for Customer Funds—§ 39.19(c)(4)(xvi)

The Commission is proposing to adopt new § 39.19(c)(4)(xvi), which would require a DCO to report any change in its arrangements with any depositories at which the DCO holds customer funds. Receiving such reporting will aid the Commission in monitoring a DCO's compliance with section 4d of the CEA and related Commission regulations regarding the treatment of customer funds, including § 39.15(b).

17. Change in Fiscal Year—§ 39.19(c)(4)(xx)

The Commission is proposing to adopt new § 39.19(c)(4)(xx), which would require a DCO to immediately notify the Commission of any change to the start and end dates for its fiscal year. Because several other required reports are tied to a DCO's fiscal year (*e.g.,* quarterly financial reports, annual report of the chief compliance officer), a change in the DCO's fiscal year would change the reporting periods and deadlines for those reports, and the Commission would need to know when those reports are to be submitted by the DCO.

18. Change in Independent Accounting Firm—§ 39.19(c)(4)(xxi)

The Commission is proposing to adopt new § 39.19(c)(4)(xxi), which would require a DCO to report to the Commission no later than one business day after any change in the DCO's independent public accounting firm. The report would include the date of such change, the name and contact information of the new firm, and the reason for the change.

19. Major Decision of the Board of Directors—§ 39.19(c)(4)(xxii)

The Commission is proposing to adopt new § 39.19(c)(4)(xxii) to codify in § 39.19 the requirement (currently in § 39.32(a)(3)(i) and proposed in § 39.24(a)(3)(i), as discussed further below) that a DCO report to the Commission any major decision of the DCO's board of directors.

20. Margin Model Issues—§ 39.19(c)(4)(xxiv)

The Commission is proposing to adopt new § 39.19(c)(4)(xxiv), which would require a DCO to report to the Commission no later than one business day after any issue occurs with a DCO's margin model, including margin models for cross-margined portfolios, that affects the DCO's ability to calculate or collect initial margin or variation margin. The Commission is proposing this change because some DCOs have had unanticipated issues arise with the functioning of their margin models as a result of, among other things, the introduction of new products or significant increases in volatility.

21. Recovery and Wind-Down Plans—§ 39.19(c)(4)(xxv)

The Commission is proposing to adopt new § 39.19(c)(4)(xxv), which would require a DCO that is required to maintain recovery and wind-down plans pursuant to § 39.39(b) to submit its plans to the Commission no later than the date on which it is required to have the plans. The Commission is also proposing to permit a DCO that is not required to maintain recovery and wind-down plans pursuant to § 39.39(b), but which nonetheless maintains such plans, to submit the plans to the Commission. If a DCO subsequently revises its plans, the DCO would be required to submit the revised plans to the Commission along with a description of the changes and the reason for those changes. The Commission is proposing this requirement because § 39.39(b) requires certain DCOs to maintain recovery and wind-down plans, but there is currently no explicit requirement that the DCOs submit the plans to the Commission.

22. New Product Accepted for Clearing—§ 39.19(c)(4)(xxvi)

The Commission is proposing to adopt new § 39.19(c)(4)(xxvi), which would require a DCO to provide notice to the Commission no later than 30 calendar days prior to accepting a new product for clearing. The Commission is proposing this change because § 40.2 requires a DCM or SEF to make a submission to the Commission prior to listing a product for trading that has not been approved under § 40.3, but there is currently no comparable requirement applicable to DCOs.

The proposed notice would include: (1) A brief description of the new product; (2) the date on which the DCO intends to begin accepting the new product for clearing; (3) a statement as to whether the new product will require

the DCO to submit any rule changes pursuant to §§ 40.5 or 40.6; (4) a statement as to whether the DCO has informed, or intends to inform, its clearing members and/or the general public of the new product and, if written notice was given, a web address for or copy of such notice; and (5) an explanation of any substantive opposing views received from such outreach and how the DCO addressed such views or objections. The Commission believes receiving the notice 30 days before the DCO will begin accepting the product for clearing will allow Commission staff enough time to ask further questions of the DCO as necessary.

The Commission has not defined ''product'' for purposes of § 40.2 or § 40.3. The Commission requests comment on whether defining this term would be helpful in clarifying what products must be reported to the Commission under proposed new § 39.19(c)(4)(xxvi). If so, the Commission further requests comment regarding how the term should be defined.

23. Requested Reporting—§ 39.19(c)(5)

Regulation 39.19(c)(5)(i) through (iii) requires a DCO to provide to the Commission, upon request by the Commission, specific types of information. Paragraphs (c)(5)(i) through (iii) states that the information must be provided to the Commission ''in the format and manner specified, and within the time provided, by the Commission in the request.'' The Commission is proposing to amend § 39.19(c)(5)(i) through (iii) by deleting this language from each of the subparagraphs and adding introductory language to the paragraph that would require a DCO to provide the information specified in the paragraphs upon request by the Commission ''and within the time specified in the request.'' Regulation 39.19(b) already requires a DCO to provide the information in the format and manner specified by the Commission, so it is unnecessary to repeat that requirement in § 39.19(c)(5).

The Commission is proposing to remove current § 39.19(c)(5)(iii), which requires a DCO to report to the Commission upon request end of day gross positions by each beneficial owner. This provision is no longer necessary given the proposed amendment to § 39.19(c)(1)(i), which requires a DCO to report margin, cash flow, and position information by individual customer account.

I. Public Information—§ 39.21

Regulation 39.21 implements Core Principle L, which generally requires that a DCO provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the DCO. The Commission is proposing some minor changes to clarify the requirements of § 39.21.

1. Public Disclosure and Publication of Information—§ 39.21(c) and (d)

Regulation 39.21(c) requires a DCO to disclose publicly and to the Commission information concerning: (1) The terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO; (2) each clearing and other fee that the DCO charges its clearing members; (3) the margin-setting methodology; (4) the size and composition of the financial resource package available in the event of a clearing member default; (5) daily settlement prices, volume, and open interest for each contract, agreement, or transaction cleared or settled by the DCO; (6) the DCO's rules and procedures for defaults in accordance with § 39.16; and (7) any other matter that is relevant to participation in the clearing and settlement activities of the DCO. Regulation 39.21(d) requires the DCO to post all of this information, as well as the DCO's rulebook and a list of its current clearing members, on the DCO's website, unless otherwise permitted by the Commission.

The Commission is proposing to remove § 39.21(d) and incorporate its requirements into § 39.21(c). The Commission believes that this will help clarify for DCOs what information must be made publicly available on their websites. The Commission has noted that some DCOs have made available certain items of information listed in current § 39.21(c) only by posting their rulebooks on their websites. The Commission wishes to clarify that a DCO must make each of the items of information listed in proposed § 39.21(c) available separately on the DCO's website and not just in the DCO's rulebook. This will assist members of the public in locating the relevant information and may facilitate greater uniformity across DCO websites.

2. Financial Resources—§ 39.21(c)(4)

Regulation 39.21(c)(4) requires a DCO to disclose publicly the size and composition of its financial resource package available in the event of a clearing member default. The Commission has received questions concerning how often this information must be updated. Regulation 39.11(f)(1)(i)(A) requires a DCO to report this information to the Commission each fiscal quarter or at any time upon Commission request. The Commission believes it is reasonable to expect a DCO to update this information publicly with the same frequency. Therefore, the Commission is proposing to amend § 39.21(c)(4) by adding the words ''updated as of the end of the most recent fiscal quarter or upon Commission request and posted concurrently with submission of the report to the Commission under § 39.11(f)(1)(i)(A).''

3. Daily Settlement Prices, Volume, and Open Interest—§ 39.21(c)(5)

Regulation 39.21(c)(5) requires a DCO to disclose publicly daily settlement prices, volume, and open interest for each contract, agreement, or transaction cleared or settled by the DCO. Pursuant to current § 39.21(d), this information must be made available to the public on the DCO's website no later than the business day following the day to which the information pertains.

The Commission has received questions from DCOs about the appropriate scope and time period for disclosure of daily settlement prices. With respect to scope, § 39.21(c)(5) clearly refers to daily settlement prices, volume, and open interest ''for each contract, agreement, or transaction cleared or settled'' by the DCO. The Commission therefore expects comprehensive disclosure of daily settlement prices, volume, and open interest for all contracts cleared or settled by the DCO, acting in its capacity as a DCO.[58] However, the Commission is aware that certain DCOs may not be posting all of the required information on their websites. The Commission notes that current § 39.21(d) requires posting of this information ''unless otherwise permitted by the Commission.'' Accordingly, any DCO that does not post all of the required information must seek relief from the Commission. In addition, although the plain language of § 39.21(c)(5) indicates that ''daily'' is intended to apply not only to settlement prices, but also to volume and open interest, the Commission hereby confirms that DCOs are expected to publicly disclose

[58] Regulation 39.21(c)(5) does not require a DCO to post information concerning contracts, agreements, or transactions it clears outside of its capacity as a DCO. For example, a DCO that is also registered with the SEC as a securities clearing agency would not have to post information concerning security-based swaps in order to comply with this provision.

volume and open interest, as well as settlement prices, on a daily basis in order to comply with § 39.21(c)(5).

Regulation 39.21(c)(5) does not specify a period of time the information must remain on the website. However, the Commission notes that certain DCOs make several days' worth of information available on their websites, and the Commission encourages others to do the same.

4. Swaps Required To Be Cleared—§ 39.21(c)(8)

Regulation 50.3(a) requires that a DCO make publicly available on its website a list of all swaps that it will accept for clearing and identify which swaps on the list are required to be cleared under section 2(h)(1) of the CEA and part 50 of the Commission's regulations. The Commission is proposing to adopt § 39.21(c)(8) to add a cross-reference to § 50.3(a).

J. Governance Fitness Standards, Conflicts of Interest, and Composition of Governing Boards—§§ 39.24, 39.25, and 39.26

The Dodd-Frank Act added three new core principles to the CEA relating to the governance of a DCO and the mitigation of potential conflicts of interest within a DCO. Core Principle O requires a DCO to establish governance arrangements that are transparent to fulfill public interest requirements and to permit the consideration of the views of owners and participants. Core Principle O also requires a DCO to establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the DCO, any other individual or entity with direct access to the settlement or clearing activities of the DCO, and any other party affiliated with any of the foregoing individuals or entities.

Core Principle P requires a DCO to establish and enforce rules to minimize conflicts of interest in the decision-making process of the DCO and establish a process for resolving such conflicts of interest. Core Principle Q requires a DCO to ensure that the composition of its governing board or committee includes market participants.

After the Dodd-Frank Act was enacted, the Commission proposed regulations that would have implemented Core Principles O, P, and Q.[59] Those regulations have not been finalized, but the Commission did adopt other regulations that address some of the same issues that the proposed regulations would have addressed. For example, § 39.12(a)(1) requires a DCO to have participant eligibility criteria that permit fair and open access to the DCO; this addresses the concern that a DCO's existing clearing members might try to block potential members' access to the DCO for reasons that are not risk-based.[60]

As previously noted, the Commission also adopted subpart C of part 39 of the Commission's regulations.[61] Included in subpart C is § 39.32, which sets forth the requirements for governance arrangements for SIDCOs and subpart C DCOs. In promulgating § 39.32, the Commission noted that its requirements are consistent with Core Principles O, P, and Q.[62]

The Commission is proposing to remove § 39.32 and adopt new §§ 39.24, 39.25, and 39.26, which would incorporate all of the requirements of § 39.32 and move them to subpart B, making them applicable to all DCOs, not just SIDCOs and subpart C DCOs. These governance requirements are designed to enhance risk management and controls by promoting transparency of governance arrangements and making sure that the interests of a DCO's clearing members and, where relevant, their customers are taken into account. The Commission believes these standards are appropriate for all DCOs, as most DCOs already meet such standards in order to be considered a QCCP, and incorporate best practices within the clearing industry. The Commission notes, however, that while the language that is proposed to be adopted in these sections is essentially the same as that which is included in § 39.32, the provisions have been rearranged to correspond with the relevant core principle—§ 39.24 implements Core Principle O; § 39.25 implements Core Principle P; and § 39.26 implements Core Principle Q.

As noted above, Core Principle Q requires a DCO to ensure that the composition of its governing board or committee includes market participants. The Commission has become aware of issues in interpreting this requirement. In order to avoid ambiguity and provide greater clarity, the Commission is proposing to clarify certain aspects of this requirement. First, Commission staff has received questions as to whether the term ''governing'' should be read to apply only to the term ''board,'' or if it should be read to apply to the term ''committee'' as well. Consistent with the title of Core Principle Q, ''Composition of Governing Boards,'' the Commission interprets this clause to refer to the governing body, whether a ''board'' or a ''committee,'' and does not interpret this clause to refer to the ''governing board'' or a ''committee,'' which could be any type of committee. Therefore, the Commission is proposing to require market participation on the DCO's governing board or board-level committee, *i.e.,* the group with the ultimate decision-making authority.

Second, the Commission is proposing to define ''market participant'' in part 39 to mean any clearing member of the DCO or customer of such clearing member, or an employee, officer, or director of such an entity. A DCO's clearing members and their customers have a unique perspective that complements that of the other decision makers on the governing board. Customers clearing trades through an FCM in a particular market are exposed to the risks of that market, just as clearing members are, and therefore have similar interests in the decisions that govern the operations of the DCO. In general, clearing members and their customers understand risk, have market experience and perspective, and have knowledge of clearing and the markets for which the DCO clears. The Commission notes that an employee, officer, or director of a market participant serving on a DCO's governing board or committee is not necessarily required to have voting power, as such participation may impose duties that are in conflict with the employee, officer, or director's duties to the market participant. However, a non-voting market participant must otherwise be enabled by the DCO to participate fully in board meetings in terms of receiving information, providing input, and representing market participant views.

K. Legal Risk—§ 39.27

Regulation 39.27(c) requires a DCO that provides clearing services outside the United States to identify and address conflict of law issues, specify a choice of law, be able to demonstrate the enforceability of its choice of law in relevant jurisdictions, and be able to demonstrate that its rules, procedures, and contracts are enforceable in all

[59] *See* Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 FR 63732 (Oct. 18, 2010); Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; Additional Requirements Regarding the Mitigation of Conflicts of Interest, 76 FR 722 (Jan. 6, 2011). The Commission is withdrawing these proposals as they relate to DCOs.

[60] Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 FR at 63735–36.

[61] *See* Derivatives Clearing Organizations and International Standards, 78 FR 72476 (Dec. 2, 2013).

[62] *See id.* at 72485–86.

relevant jurisdictions. In addition, Form DCO requires each applicant for DCO registration that provides or will provide clearing services outside the United States to provide a memorandum to the Commission that would, among other things, analyze the insolvency issues in the jurisdiction where the applicant is based.

The Commission is proposing to amend § 39.27(c) by adding paragraph (c)(3). Proposed § 39.27(c)(3) would require a DCO that provides clearing services outside the United States to ensure on an ongoing basis that the memorandum required in Exhibit R of Form DCO is accurate and up to date and to submit an updated memorandum to the Commission promptly following all material changes to the analysis or content contained in the memorandum.

L. Fully-Collateralized Positions

The Commission has oversight of a few registered DCOs that clear fully-collateralized positions. Fully-collateralized positions are designed to have on deposit a sufficient amount of funds, at all times, to cover the maximum potential loss that could be incurred in connection with a position. In the case of binary options, for example, the maximum risk is limited to the amount invested in the option. Because counterparties do not take a position in the underlying asset, movements in the underlying asset would not affect the payout received or loss incurred. Full collateralization prevents a DCO from being exposed to credit risk stemming from the inability of a clearing member or customer of a clearing member to meet a margin call or a call for additional capital. This limited exposure and full collateralization of that exposure renders certain provisions of part 39 inapplicable or unnecessary. As a result, the Division has granted relief from certain provisions of part 39 to DCOs that clear fully-collateralized positions.[63] With this release, the Commission is proposing to codify this relief and to provide clarity to DCOs and future applicants for DCO registration regarding how the regulations in part 39 apply to DCOs that clear fully-collateralized positions.[64]

Fully-collateralized positions do not expose DCOs to many of the risks that traditionally margined products do. Therefore, the Commission is proposing to amend certain part 39 regulations to better accommodate fully-collateralized positions, where full-collateralization addresses the risks that the regulations are meant to address.

The proposed amendments are based on an assessment of how the DCO Core Principles and part 39 apply to fully-collateralized positions, as well as the relief previously granted to DCOs that clear such positions. The Commission believes the proposed amendments would not negatively impact prudent risk management at any DCO, regardless of the types of products cleared.

1. Definition of ''Fully-Collateralized Positions''—§ 39.2

The Commission is proposing to define a ''fully-collateralized position'' as a contract cleared by a derivatives clearing organization that requires the derivatives clearing organization to hold, at all times, funds in the form of the required payment sufficient to cover the maximum possible loss that a counterparty could incur upon liquidation or expiration of the contract.

2. Computation of Financial Resources Requirement—§ 39.11(c)(1)

Regulation 39.11(a)(1) requires a DCO to maintain financial resources sufficient to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions. Regulation 39.11(c)(1)[65] requires a DCO to perform monthly stress testing in order to make a reasonable calculation of the financial resources it would need in the event of such a default. Division staff has expressed the view that a DCO can satisfy the requirements of § 39.11(a)(1) by clearing fully-collateralized positions.[66] For fully-collateralized positions, a DCO holds its maximum possible loss on each contract at all times and does not face the risk of a clearing member default. The monthly stress tests required by § 39.11(c)(1)(i) are therefore unnecessary for fully-collateralized positions. Accordingly, the Commission is proposing to amend § 39.11(c)(1)(i) to clarify that a DCO does not have to perform monthly stress tests on fully-collateralized positions.

3. Liquidity of Financial Resources—§ 39.11(e)(1)(ii)

Regulation 39.11(e)(1)(ii) requires a DCO to have enough financial resources to meet the requirements of § 39.11(a)(1) that are sufficiently liquid to enable the DCO to fulfill its obligations during a one-day settlement cycle. The specific amount of liquid resources a DCO must hold is based on the historical settlement pays of its clearing members. A DCO maintains sufficient liquidity for fully-collateralized positions by requiring clearing members to post the full potential loss of a position in the form of the potential obligation. Requiring collateral to be in the form of the potential obligation eliminates the risk that the DCO will not have sufficient liquidity to meet its obligations and the need for daily mark-to-market settlements. Further, if a DCO were to complete the calculation required by § 39.11(e)(1)(ii), the amount would not change from day to day as the DCO operates a fully-collateralized model. As a result, the calculation required in § 39.11(e)(1)(ii) is neither necessary or applicable for fully-collateralized positions. The Commission is therefore proposing to amend § 39.11(e)(1)(iv) to clarify that DCOs do not need to include fully-collateralized positions in the calculation required thereunder.

4. Periodic Reporting of Participant Eligibility—§ 39.12(a)(5)(i) and (a)(5)(i)(B)

Regulation 39.12(a)(5)(i) requires a DCO to require its clearing members to provide the DCO with periodic financial reports that allow the DCO to assess whether participation requirements are being met on an ongoing basis. Regulation 39.12(a)(5)(i)(B)[67] requires a DCO to make these reports available to the Commission at the Commission's request.[68] The Commission's participant eligibility requirements in § 39.12(a) are intended to ensure that DCO participants maintain sufficient financial resources and operational capacity to meet the obligations arising from clearing at a DCO.[69] Clearing members that only clear fully-collateralized positions present no

[63] *See* CFTC Letter No. 14–04 (January 16, 2014) (granting exemptive relief to the North American Derivatives Exchange, Inc. (Nadex)); CFTC Letter No. 17–35 (July 24, 2017) (granting exemptive relief to LedgerX).

[64] The Division also issued interpretive guidance to Nadex for other provisions in part 39. CFTC Letter No. 14–05 (January 16, 2014). The interpretive guidance may be relied on by third parties, and is not impacted by this proposed rulemaking.

[65] Revisions contained elsewhere in this proposed rulemaking would renumber this paragraph as § 39.11(c)(1)(i).

[66] *See* CFTC Letter No. 14–05 (January 16, 2014) (providing interpretive guidance to Nadex).

[67] Revisions contained elsewhere in this proposed rulemaking would renumber § 39.12(a)(5)(i)(B) as § 39.12(a)(5)(iii).

[68] Regulation 39.12(a)(5)(i)(B) allows DCOs to either require clearing members to make the reports available to the Commission or to provide the reports to the Commission directly.

[69] *See* Derivatives Clearing Organization General Provisions and Core Principles, 76 FR at 69352.

credit or default risk to the DCO because their full potential loss is already held by the DCO. Thus, periodic financial reports from non-FCM clearing members that only clear fully-collateralized positions do not provide any risk management benefit to DCOs. The Commission therefore is proposing to add new § 39.12(a)(5)(v) to exclude non-FCM clearing members that only clear fully-collateralized positions from the financial reporting requirements in § 39.12(a)(5)(i) and (a)(5)(i)(B).

5. Large Trader Stress Tests—§ 39.13(h)(3)

Regulation 39.13(h)(3) requires a DCO to conduct stress testing on a daily basis with respect to each large trader who poses significant risk to a clearing member or the DCO, and at least on a weekly basis with respect to each clearing member account, by house origin and by each customer origin. As discussed above, DCOs hold, at all times, the full potential loss of fully-collateralized positions cleared by the DCO, and a DCO does not face the risk of default from accounts that only hold fully-collateralized positions. As a result, such stress tests would not provide DCOs new information on accounts that only clear fully-collateralized positions. The Commission is therefore proposing to add new § 39.13(h)(3)(iii) to exclude clearing member accounts that hold only fully-collateralized positions from the stress testing requirements in § 39.13(h)(3)(i) and (ii).

6. Daily Reporting—§ 39.19(c)(1)(i)

Regulation 39.19(c)(1)(i) requires a DCO to submit to the Commission a daily report containing information on initial margin, daily variation margin payments, other daily cash flows, and end-of-day positions. Because fully-collateralized positions do not pose a credit risk to the DCO or other participants, the Commission does not need daily reporting of this information with respect to fully-collateralized positions. Therefore, the Commission is proposing to amend § 39.19(c)(1)(i) such that the enumerated daily reporting is not required with respect to fully-collateralized positions.

V. Amendments to Part 39—Subpart C—Provisions Applicable to SIDCOs and DCOs That Elect To Be Subject to the Provisions

A. Financial Resources for SIDCOs and Subpart C DCOs—§ 39.33

Regulation 39.33(a)(1) requires a SIDCO or a subpart C DCO that is systemically important in multiple jurisdictions, or that is involved in activities with a more complex risk profile, to maintain financial resources sufficient to enable it to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined loss in extreme but plausible market conditions. The Commission is proposing to amend § 39.33(a)(1) by replacing the phrase ''largest combined loss'' with ''largest combined financial exposure'' in order to achieve consistency with the relevant provisions of Commission regulations and the CEA—specifically, § 39.11(a)(1) and section 5b(c)(2)(B) of the CEA regarding DCO financial resources requirements.

Regulation 39.33(c)(1) requires a SIDCO or subpart C DCO to maintain eligible liquid resources sufficient to meet its obligations to perform settlements with a high degree of confidence under a wide range of stress scenarios that should include the default of the clearing member creating the largest aggregate liquidity obligation for the SIDCO or subpart C DCO. The Commission is proposing to amend § 39.33(c)(1) by adding the phrase ''in all relevant currencies'' to clarify that the ''largest aggregate liquidity obligation'' means the total amount of cash, in each relevant currency, that the defaulted clearing member would be required to pay to the DCO during the time it would take to liquidate or auction the defaulted clearing member's positions, as reasonably modeled by the DCO. When evaluating its largest aggregate liquidity obligation on a day-to-day basis over a multi-day period, a SIDCO or subpart C DCO may use its liquidity risk management model.

Regulation 39.33(d) requires a SIDCO or a subpart C DCO to undertake due diligence to confirm that each of its liquidity providers has the capacity to perform its commitments to provide liquidity, and to regularly test its own procedures for accessing its liquidity resources. The Commission is proposing to additionally require a SIDCO with access to deposit accounts and related services at a Federal Reserve Bank to use such services where practical. This requirement would further enhance a SIDCO's financial integrity and management of liquidity risk.[70]

B. Risk Management for SIDCOs and Subpart C DCOs—§ 39.36

Regulation 39.36 requires a SIDCO or a subpart C DCO to conduct stress tests of its financial and liquidity resources and to regularly conduct sensitivity analyses of its margin models. The Commission is proposing to amend § 39.36(a)(6) to clarify that a SIDCO or subpart C DCO that is subject to the minimum financial resources requirement set forth in § 39.11(a)(1), rather than § 39.33(a), should use the results of its stress tests to support compliance with that requirement.

The Commission is also proposing to amend § 39.36(b)(2)(ii) to replace the words ''produce accurate results'' with ''react appropriately'' to more accurately reflect that the purpose of a sensitivity analysis is to assess whether the margin model will react appropriately to changes of inputs, parameters, and assumptions. The Commission is also proposing to amend § 39.36(d), which requires each SIDCO and subpart C DCO to ''regularly'' conduct an assessment of the theoretical and empirical properties of its margin model for all products it clears, to clarify that the assessment should be conducted ''on at least an annual basis (or more frequently if there are material relevant market developments).''

The Commission is also proposing to amend § 39.36(e) by adding the heading ''[i]ndependent validation'' to the provision.

C. Additional Disclosure for SIDCOs and Subpart C DCOs—§ 39.37

Regulation 39.37(a) and (b) requires a SIDCO or a subpart C DCO to publicly disclose its responses to the CPMI–IOSCO Disclosure Framework[71] and, in order to ensure the continued accuracy and usefulness of its responses, to review and update them at least every two years and following material changes to the SIDCO's or subpart C DCO's system or environment in which it operates. The Commission is proposing to amend § 39.37(b) to additionally require that a SIDCO or a subpart C DCO provide notice to the Commission of any such updates to its responses following material changes to its system or environment no later than ten business days after the updates are made. Further, such notice would have

[70] Under section 806(a) of the Dodd-Frank Act, 12 U.S.C. 5465(a), the Board of Governors of the Federal Reserve System may authorize a Federal Reserve Bank to establish and maintain an account for a financial market utility (FMU), which includes a SIDCO. A SIDCO with access to accounts and services at a Federal Reserve Bank is required to comply with related rules published by the Board of Governors of the Federal Reserve System. *See generally* Financial Market Utilities, 78 FR 76973 (Dec. 20, 2013) (final rules adopted by the Board of Governors to govern accounts held by designated FMUs).

[71] *See* CMPI–IOSCO, Principles for Financial Market Infrastructures: Disclosure Framework and Assessment Methodology (Dec. 2012), available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD396.pdf.*

to be accompanied by a copy of the text of the responses, specifying the changes that were made to the latest version of the responses. Providing this notice would ensure that the Commission has access to the most current information available and would enable the Commission to identify changes since the last update to the disclosure responses.

Regulation 39.37(c) requires a SIDCO or a subpart C DCO to disclose, to the public and to the Commission, relevant basic data on transaction volume and values. In adopting this provision, the Commission noted that this requirement was intended to be consistent with the then-forthcoming quantitative disclosure standards being developed by CPMI–IOSCO.[72] On February 26, 2015, CPMI–IOSCO published the Public Quantitative Disclosure Standards for Central Counterparties.[73] The Commission is proposing to amend § 39.37(c) to explicitly state that a SIDCO or a subpart C DCO must disclose relevant basic data on transaction volume and values that are consistent with the standards set forth in the CPMI–IOSCO Public Quantitative Disclosure Standards for Central Counterparties.

D. Corrections to Subpart C Regulations

The Commission is proposing to amend § 39.39(a)(2) to change the word ''or'' to ''of.''

VI. Amendments to Appendix A to Part 39—Form DCO

To request registration as a DCO, § 39.3(a)(2) requires an applicant to file a complete Form DCO, which includes a cover sheet, all applicable exhibits, and any supplemental materials, as provided in appendix A to part 39. The Commission uses Form DCO, which is comprised of a series of different exhibits that require the applicant to provide details of its operations, to determine whether the applicant demonstrates compliance with the Act and applicable Commission regulations. Applicants must also use Form DCO to amend a pending application or request an amended order of registration.

The Commission is proposing to amend Form DCO to better describe the required exhibits in a manner that is consistent with the proposed amendments to the relevant regulations as described herein. For example, the Commission proposes to amend Exhibit A–11 to incorporate the more flexible CCO reporting structure that the Commission is proposing in § 39.10(c)(1)(ii); add proposed Exhibit A–12 to describe a DCO's enterprise risk management program as consistent with newly proposed § 39.10(d); amend Exhibit B–1 to incorporate proposed amendments to the Commission's financial resources requirements in proposed § 39.11; and amend Exhibits O, P and Q to reflect the Commission's proposed amendments to §§ 39.24, 39.25, and 39.26 which would incorporate the specific governance arrangement, conflict of interest, and board composition requirement, which are currently only detailed in § 39.32 for SIDCOs and subpart C DCOs.

The Commission is also proposing to amend Form DCO to update the form to reflect the Commission's other rulemaking efforts. For example, the Commission proposes to amend Exhibit A–6 to update the reference from public director to independent director to remove terminology that was proposed but not ultimately adopted by the Commission for certain governance requirements, and amend Exhibit F–2 to include cross-references to Commission regulations in part 22 which was adopted after the Commission adopted part 39.

The Commission also proposes to amend Form DCO to eliminate information that has proven to be unnecessary to determine an applicant's compliance with the Act and applicable Commission regulations. For example, the Commission proposes to eliminate the requirement within Exhibit A–6 that an applicant provide contact information for each officer, director, governor, general partners, LLC managers, and all standing committee members. Lastly, the Commission also proposes to remove references within the Form DCO instructions to use the form to request an amended order of registration. The Commission intends for these proposed Form DCO changes to establish a clearer application process for applicants that also provides the Commission with improved information to determine compliance with the Act and Commission regulations.

VII. Amendments to Appendix B to Part 39—Subpart C Election Form

The Commission is proposing to amend the subpart C Election Form to better reflect the requirements in subpart C of part 39 and to more closely align the format of the subpart C Election Form with Form DCO by specifying the information and/or documentation that must be provided by a DCO as part of its petition for subpart C election.

Currently, unlike Form DCO, the subpart C Election Form references the corresponding regulations in subpart C, but does not specify the type or level of information that must be filed as an exhibit. In order to more closely align the format of the subpart C Election Form with Form DCO, the Commission is proposing to amend the subpart C Election Form to reflect the requirements of subpart C.

VIII. Amendments to Part 140—Organization, Functions, and Procedures of the Commission

Regulation 140.94 includes delegation of authority from the Commission to the Director of the Division of Clearing and Risk. The Commission is proposing to revise § 140.94 to conform to the changes to part 39 it is proposing in this release.

IX. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis on the impact.[74] The regulations proposed by the Commission will affect only DCOs. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[75] The Commission has previously determined that DCOs are not small entities for the purpose of the RFA.[76] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)[77] provides that Federal agencies, including the Commission, may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number from the Office of Management and Budget (OMB). This proposed rulemaking contains reporting and recordkeeping requirements that are collections of information within the meaning of the PRA. If adopted,

[72] Derivatives Clearing Organizations and International Standards, 78 FR at 72493.

[73] *See* CPMI–IOSCO, Public Quantitative Disclosure Standards for Central Counterparties (Feb. 2015), available at *https://www.bis.org/cpmi/publ/d125.pdf.*

[74] 5 U.S.C. 601 *et seq.*

[75] 47 FR 18618 (Apr. 30, 1982).

[76] *See* 66 FR 45604, 45609 (Aug. 29, 2001).

[77] 44 U.S.C. 3501 *et seq.*

responses to the collections of information would be required to obtain a benefit. This section addresses the impact that the proposal will have on existing information collection requirements associated with part 39.

Additionally, the Commission is consolidating four collections of information relating to requirements under part 39.[78] The requirements covered by all four existing collections will be combined in OMB control number 3038–0076, which will be renamed as ''Requirements for Derivatives Clearing Organizations,'' and OMB control numbers 3038–0066, 3038–0069, and 3038–0081 will be cancelled. Changes to the existing information collection requirements as a result of this proposal are set forth below.

1. Subpart A—General Requirements Applicable to DCOs

Subpart A establishes the procedures and information required for applications for registration as a DCO, including submission of a completed Form DCO accompanied by all applicable exhibits. Form DCO is covered by OMB control number 3038–0076. Currently, collection 3038–0076 reflects that there are 3 applicants for DCO registration annually and that it takes 400 hours to complete and submit the form, including all exhibits. The Commission is reducing the number of potential applicants for DCO registration to two annually, based on recent numbers of applications filed. The Commission is proposing to modify and update Form DCO to conform it to the proposed revisions to part 39.

Additionally, the Commission is proposing to apply certain governance requirements applicable to SIDCOs and subpart C DCOs to all DCOs. This necessitates moving the corresponding burden hours from the subpart C Election Form to Form DCO. Specifically, 22 burden hours per respondent for the subpart C Election Form—Exhibits A through G, currently under OMB control number 3038–0081, would transfer to the Form DCO burden per respondent in OMB control number 3038–0076.

The proposal would eliminate the requirement for DCOs to use Form DCO to request an amended order of DCO registration. The Commission estimates the burden hours per respondent would decrease by one hour due to the proposed change to § 39.3(a)(2) that would no longer require a DCO seeking to amend its order of registration to submit Form DCO. The new aggregate proposed estimate for Form DCO is as follows:

Form DCO—§ 39.3(a)(2)

Estimated number of respondents: 2.

Estimated number of reports per respondent: 1.

Average number of hours per report: 421.

Estimated gross annual reporting burden: 842.

The Commission also is proposing to amend certain existing provisions of § 39.3 regarding requests for extension of the review of a DCO application, vacation of a DCO's registration, and transfer of positions. The Commission is proposing to adopt new § 39.3(a)(6), which would permit the Commission to extend the 180-day review period for DCO applications specified in § 39.3(a)(1) for any period of time to which the applicant agrees in writing. Although this is not a new practice, it was not previously accounted for separately in this information collection. The Commission is estimating that there would be two requests for extension of the DCO application per year, one per respondent, and that it will take one hour per report. The new aggregate proposed estimate for the agreement in writing to extend the application review period pursuant to § 39.3(a)(6) is as follows:

Estimated number of respondents: 2.

Estimated number of reports per respondent: 1.

Average number of hours per report: 1.

Estimated gross annual reporting burden: 2.

The Commission is proposing to amend § 39.3(e) to codify statutory requirements regarding vacation of registration. The proposed changes would specify information that a DCO must include in its request to vacate, and require a DCO to continue to maintain its books and records after its registration has been vacated for the requisite statutory and regulatory retention periods. The Commission estimates that there would be one request to vacate every three years and that it would take three hours per report. The annual aggregate burden for the request to vacate requirement has been divided to reflect the estimate of one request to vacate a DCO registration pursuant to § 39.3(e)(1) every three years as follows:

Estimated number of respondents: 1.

Estimated number of reports per respondent: 0.33.

Average number of hours per report: 1.

Estimated gross annual reporting burden: 1.

For recordkeeping by a DCO that has requested to vacate its registration, the Commission is adding this recordkeeping burden to OMB control number 3038–0076, which currently includes 16 responses and 50 burden hours for the recordkeeping requirement of registered DCOs. The Commission is also transferring the 100 recordkeeping burden hours currently contained in OMB control number 3038–0069 to OMB control number 3038–0076. The burden for the request to vacate requirement has been divided to reflect the estimate of one record of the request to vacate a DCO registration pursuant to § 39.3(e)(1) every three years. The combined annual aggregate recordkeeping burden estimate for subparts A and B of part 39 under OMB control number 3038–0076 is as follows:

Estimated number of respondents: 16.

Estimated number of reports per respondent: 1.

Average number of hours per report: 150.

Estimated number of respondents-request to vacate: 1.

Estimated number of reports per respondent-request to vacate: 0.33.

Average number of hours per report-request to vacate: 1.

Estimated gross annual recordkeeping burden: 2,401.[79]

The Commission is proposing changes to § 39.3(f), to be renumbered as § 39.3(g), to simplify the requirements for requesting a transfer of open interest. The rule submission filing is covered by OMB control number 3038–0093, which reflects that there are 50 reports annually and that it takes two hours per response. The Commission is of the view that to the extent that the transfer of open interest request would be submitted as part of a new rule or rule amendment filing pursuant to § 40.5, the proposed change is already covered by OMB control number 3038–0093 and there is no change in the burden estimates.

[78] The four collections are: OMB Control No. 3038–0066, Financial Resources Requirements for Derivatives Clearing Organizations; OMB Control No. 3038–0081, General Regulations and Derivatives Clearing Organizations; OMB Control No. 3038–0069, Information Management Requirements for Derivatives Clearing Organizations; and OMB Control No. 3038–0076, Risk Management Requirements for Derivatives Clearing Organizations.

[79] The total annual recordkeeping burden estimate reflects the combined figures for 16 registered DCOs with an annual burden of one response and 150 hours per response ($16 \times 1 \times 150 = 2{,}400$), and one vacated DCO registration every three years with an annual burden of one hour.

2. Subpart B—Requirements for Compliance With Core Principles

a. CCO Annual Reporting Requirements—§ 39.10(c)

Currently, § 39.10(c)(3) requires the CCO of a DCO to prepare, and to submit to the Commission and the DCO's board of directors, an annual compliance report containing specified information regarding the DCO's compliance with the core principles and Commission regulations. The burden for CCO annual reports, which is currently covered by OMB control number 3038–0081, is being moved to OMB control number 3038–0076. OMB control number 3038–0081 reflects that there are 12 respondents that submit CCO annual reports annually and that it takes 80 hours to complete and submit the report, and 960 hours in the aggregate. The number of respondents is being updated to 16 to reflect the current number of registered DCOs. The Commission is proposing to allow a DCO to incorporate by reference certain sections of prior annual compliance reports. Specifically, if the sections of the CCO annual report that describe the DCO's compliance policies and procedures have not materially changed, the current report may reference a prior year's report, provided that the referenced report was filed within the prior five years. The Commission estimates that this change should decrease the burden of preparing the CCO annual report by ten hours per respondent, and 160 hours in aggregate, by not requiring the report to repeat potentially lengthy descriptions of policies and procedures that have already been adequately described in a CCO annual report previously submitted to the Commission.

The Commission is proposing to specify that the CCO annual report must identify, by name, rule number, or other identifier, the policies and procedures intended to comply with each core principle and applicable regulation. The Commission estimates the proposed change would add two hours to the burden of preparing each report, and 32 hours in the aggregate. Lastly, the Commission is proposing to amend § 39.10(c)(4) to require that the CCO annual report describe the process by which the report is submitted to the DCO's board or senior officer. This requirement would require DCOs to memorialize in the report a process they are already required to follow. Nonetheless, the Commission anticipates an increase of one hour in the burden for each report, and 16 hours in the aggregate due to this proposed change. Overall, the Commission estimates that the net impact of these increases and reductions to the CCO annual report burden due to the proposed changes is expected to be a decrease of seven hours per respondent in the existing information collection burden associated with the CCO annual report.[80] The aggregate proposed estimate for the CCO annual report is as follows:

Estimated number of respondents: 16.

Estimated number of reports per respondent: 1.

Average number of hours per report: 73.

Estimated gross annual reporting burden: 1,168.

b. Cross-Margining Programs

The Commission is proposing to add § 39.13(i), which would set forth the procedure for DCOs to submit information related to their proposed cross-margining programs with other DCOs (or other clearing organizations). Proposed § 39.13(i) would specify the information that a DCO would need to provide to the Commission regarding its cross-margining program and require that the DCO submit this information as part of a rule filing submitted for Commission approval pursuant to § 40.5. The rule submission filing is covered by OMB control number 3038–0093, which reflects that there are 50 reports annually and that it takes 2 hours per response. The Commission is of the view that to the extent that the cross-margining program would be submitted as part of a new rule or rule amendment filing pursuant to § 40.5, the proposed changes is already covered by OMB control number 3038–0093 and there is no change in the burden estimates.

c. Financial Resources Reporting

i. Annual Financial Reports

Existing § 39.11(f) requires DCOs to provide to the Commission quarterly reports of their financial resources, and § 39.19(c)(3) requires DCOs to prepare and submit audited annual financial statements. The Commission is proposing to add § 39.11(f)(2), which would incorporate in § 39.11 the annual reporting requirement that currently exists in § 39.19(c)(3). This change simply moves the existing requirement to a different location, and does not alter the existing information collection burden associated with this requirement. Accordingly, the burden for annual financial reports is being moved from OMB control number 3038–0069 to OMB control number 3038–0076, and the burden for quarterly financial reports is being moved from OMB control number 3038–0066 to OMB control number 3038–0076. The Commission is cancelling OMB control numbers 3038–0069 and 3038–0066.

The Commission also is proposing to require in § 39.11(f)(2) that, concurrently with filing the required annual financial report, a DCO also provide: (1) A reconciliation, including appropriate explanations, of its balance sheet in the certified annual financial statements with the DCO's most recent quarterly report when material differences exist or, if no material differences exist, a statement so indicating, and (2) such further information as may be necessary to make the required statements not misleading. The Commission estimates that the proposed change would add an additional 20 hours per report, and 320 hours in the aggregate, to the current burden of 2,606 hours per respondent, and 41,696 hours, in OMB control number 3038–0069, which as noted above, is being moved to OMB control number 3038–0076.

Finally, the Commission is proposing in § 39.11(f)(2)(i) that the annual report be required to identify the DCO's own capital allocated to the DCO's compliance with § 39.11(a)(1), and also identify each of the DCO's financial resources allocated to the DCO's compliance with § 39.11(a)(2). The Commission estimates that the proposed change would add an additional 14 hours per report and 224 hours in the aggregate to the current burden of 2,606 hours per respondent, and 41,696 hours, in OMB control number 3038–0069, which as noted above, is being moved to OMB control number 3038–0076.

The Commission estimates that the aggregate result of these changes will be to increase the information collection burden associated with annual financial reports from 2,606 hours to 2,640 hours for each DCO. The revised estimated aggregate burden for the audited annual financial statements is as follows:

Estimated number of respondents: 16.

Estimated number of reports per respondent: 1.

Average number of hours per report: 2,640.

Estimated gross annual reporting burden: 42,240.

[80] The existing burden estimate for the CCO annual report is 80 hours per response. For the new estimate, the Commission is subtracting ten hours for the proposal not to require restatement of information that has not changed from the prior report, adding two hours for the proposal to require references to rules and policies, and one hour for the proposal to require that the report include documentation of the process of providing the report to the board, for a net burden per respondent of 73 hours. The recordkeeping burden is covered by OMB Control No. 3038–0076 and it is not affected by the proposal.

ii. Quarterly Financial Reports

The Commission is proposing to remove from § 39.11(f)(3) the requirement that certain documentation be filed quarterly; instead, DCOs would only need to include the information in their first quarterly report submission and upon any subsequent change, for an expected reduction of three hours per report. Proposed § 39.11(f)(1)(v) would require a DCO to identify in its quarterly report the financial resources allocated to meeting its obligations under § 39.11(a)(1) and (2), with an expected increase of one hour per report. The Commission has adjusted the existing burden hours for quarterly reporting to reflect these proposed changes, which result in an overall reduction in burden of two hours per report from the total estimated burden reflected in OMB control number 3038–0066. The estimated aggregate burden for the quarterly reports, as amended by the proposal is as follows:

Estimated number of respondents: 16.

Estimated number of reports per respondent: 4.

Average number of hours per report: 8.

Estimated gross annual reporting burden: 512.

The Commission is also proposing to amend § 39.11(f)(1)(ii), which requires a DCO to file with the Commission a financial statement of the DCO or of its parent company. The Commission is proposing to amend § 39.11(f)(1)(ii) to require that the financial statement provided be that of the DCO and not the parent company. The Commission is further proposing to amend the periodic financial reporting requirements in § 39.11(f)(1)(ii) and (f)(2)(i) to permit quarterly and annual financial statements to be prepared in accordance with U.S. GAAP for DCOs incorporated or organized under U.S. law and in accordance with either U.S. GAAP or IFRS for DCOs incorporated or organized under the laws of any foreign country. These changes are not expected to affect the burden.

d. Daily Reporting

The Commission is proposing to amend § 39.19(c)(1)(i)(A)–(C), which requires a DCO to report margin, cash flow, and position information by house origin and separately by customer origin, to report this information by individual customer account as well. The Commission is also proposing to amend § 39.19(c)(1)(i)(D) to specify that, with respect to end-of-day position information, DCOs must report both unadjusted and risk-adjusted position information. The burden associated with these proposed changes is anticipated to result in an increase from 0.1 to 0.5 hours per report, and 2,000 in the aggregate. The burden increase for daily financial reports is being moved from OMB control number 3038–0069 to OMB control number 3038–0076.

Separately, the Commission is proposing changes to § 39.19(c)(1)(i) that would codify relief previously granted to fully-collateralized DCOs that would reduce their daily reporting burden by not requiring information on initial margin, daily variation margin payments, other daily cash flows, and end-of-day positions. The proposed change would reduce the burden for fully-collateralized DCOs, but would not affect the burden for the majority of DCOs that are subject to daily reporting requirements. The revised aggregate burden estimate for daily reporting being transferred to OMB control number 3038–0076 is as follows:

Estimated number of respondents: 16.

Estimated number of reports per respondent: 250.

Average number of hours per report: 0.5.

Estimated gross annual reporting burden: 2,000.

The Commission is proposing amendments to § 39.13(g)(8)(i)(B) to require a DCO to have rules requiring its clearing members to report customer information about futures (as well as swaps) to DCOs. This is a new information collection that is not covered by an existing OMB control number. The burden applicable to clearing members is estimated as follows:

Estimated number of respondents: 64.

Estimated number of reports per respondent: 250.

Average number of hours per report: 0.2.

Estimated gross annual reporting burden: 3,200.

e. Event-Specific Reporting

Regulations 39.18(g) and (h) require a DCO to provide notice regarding certain exceptional events or planned changes related to a DCO's automated systems. These notice requirements are incorporated by reference in § 39.19(c)(4). Regulation 39.19(c)(4) also requires a DCO to notify the Commission of the occurrence of other specified events; for example, a decrease in financial resources or the default of a clearing member. The information collection burden associated with these notices required under § 39.19(c)(4) is currently addressed by OMB Control No. 3038–0069, but is being moved to OMB control number 3038–0076 and consolidated with the burden in OMB control number 3038–0076 that is currently associated with § 39.18(g) and (h). In addition, the Commission is proposing to add to § 39.19(c)(4) several events for which DCOs will be required to provide notification if such events occur.

The Commission is also proposing to amend § 39.16(c)(2)(ii) to require that a DCO provide immediate public notice of a declaration of default on its website. The estimated burden of proposed § 39.16(c)(2)(ii) is included in the estimate for event-specific reporting because it would occur concurrently with the requirement under § 39.19(c)(4)(vii) that a DCO provide immediate notice to the Commission regarding the default of a clearing member.

The burden associated with these proposed changes pursuant to § 39.19(c)(4) is anticipated to result in an increase in the number of reports by DCO per year on average, from four to 20, and a reduction in the hour burden per response, which was previously overstated, from six to 0.5 hours, because a DCO is required to provide a brief notice with only the pertinent details of the incident. The aggregate revised burden estimate of § 39.19(c)(4) being transferred to OMB control number 3038–0076 is as follows:

Estimated number of respondents: 16.

Estimated number of reports per respondent: 20.

Average number of hours per report: 0.5.

Estimated gross annual reporting burden: 160.

f. Public Information

The Commission is proposing to revise § 39.21 to clarify that information regarding the financial resource package available in the event of a clearing member default, which a DCO is required to post on its website pursuant to § 39.21, should be updated at least quarterly, consistent with the requirement in § 39.11(f)(1)(i)(A) to report this information to the Commission each fiscal quarter or at any time upon Commission request. The Commission is also clarifying that other information specified in § 39.21 must be disclosed separately on the DCO's website, and not provided solely in the DCO's posted rulebook. This is a new information collection that is not covered by an existing OMB control number. The proposed changes are estimated to add an average of two hours per response, and eight hours per respondent annually (4 quarterly reports × 2 hours per report) to OMB control number 3038–0076, for an aggregate estimated burden as follows:

Estimated number of respondents: 16.
Estimated number of reports per respondent: 4.
Average number of hours per report: 2.
Estimated gross annual reporting burden: 128.

g. Governance

As noted above, the Commission is proposing to incorporate governance provisions from subpart C, which only applies to a limited subset of DCOs, into subpart B, which is applicable to all DCOs. Therefore, the information collection burden currently associated with the governance standards of § 39.32, which results from required disclosure of major board decisions and governance arrangements, has been reallocated to § 39.24. The burden associated with subpart C governance provisions, which is currently covered by OMB control number 3038–0081, is being moved to OMB control number 3038–0076. The aggregate burden of these requirements would increase because they will be applicable to all registered DCOs. The new aggregate burden estimate for proposed § 39.24 that is associated with the required ongoing disclosure of major board decisions and governance arrangements by registered DCOs, including DCOs that are not currently subject to subpart C, is estimated as follows:
Estimated number of respondents: 16.
Estimated number of reports per respondent: 6.
Average number of hours per report: 3.
Estimated gross annual reporting burden: 288.

h. Legal Risk

Proposed changes to § 39.27 would require a DCO that provides clearing services outside the United States to ensure that the legal opinion that a DCO must obtain to provide those services is accurate and up to date. The new subsection also requires the DCO to submit an updated legal memorandum to the Commission following all material changes to the analysis or content contained in the memorandum. This requirement would apply only to DCOs offering clearing services outside the U.S. This is a new information collection that is not covered by an existing OMB control number. The Commission expects that circumstances necessitating submission of an updated legal memorandum will occur infrequently, not more than once every three years, and has estimated the aggregate burden as follows:
Estimated number of respondents: 1.
Estimated number of reports per respondent: 0.33.
Average number of hours per report: 20.
Estimated gross annual reporting burden: 6.6.

3. Subpart C—Provisions Applicable to SIDCOs and DCOs That Elect To Be Subject to the Provisions of Subpart C

Because the Commission is proposing to remove and reserve § 39.32 and Exhibit B of the subpart C Election Form and to move the governance requirements to Form DCO and § 39.24, the corresponding information collection burden under § 39.32, currently covered by OMB control number 3038–0081 would be eliminated and the burden under the subpart C Election Form would be reduced. Further, in consolidating the burden for subpart C, currently in OMB control number 3038–0081, with OMB control number 3038–0076, the Commission has reassessed the burden for the subpart C Election Form, and is adjusting certain burden hour estimates and numbers of respondents. Specifically, the Commission is reducing the number of burden hours estimated for the certification portion of the subpart C Election Form from 25 hours to 2 hours, because the prior estimate overstated the burden necessary to prepare the one-page certification. The burden that is currently estimated separately for the certifications, exhibits, and supplements/amendments to the subpart C Election Form have been combined because a DCO must provide all the required information in order to submit a complete subpart C Election Form.[81]

Additionally, the Commission is proposing to update the estimated numbers of respondents for subpart C to reflect the current number of SIDCOs and subpart C DCOs, and a reduction, from five to one, in the anticipated number of DCOs newly electing to be subject to subpart C. The Commission is also updating the number of responses for the rescission notices that must be provided to clearing members based on an average of the current number of clearing members at subpart C DCOs. The Commission also is combining burden estimates that previously were estimated separately for SIDCOs only and for all subpart C DCOs; that distinction was made in the initial implementation of subpart C but is no longer necessary since the subpart C rules have been in place for several years. The revised estimated aggregate reporting burden related to the subpart C Election Form, notices and disclosure being transferred to OMB control number 3038–0076 is as follows:

Subpart C Election Form

Estimated number of respondents: 1.
Estimated number of reports per respondent: 1.
Average number of hours per report: 180.
Estimated gross annual reporting burden: 180.

Subpart C Withdrawal Notice

Estimated number of respondents: 1.
Estimated number of reports per respondent: 1.
Average number of hours per report: 2.
Estimated gross annual reporting burden: 2.

Subpart C Rescission Notice

Estimated number of respondents: 1.
Estimated number of reports per respondent: 16.
Average number of hours per report: 3.
Estimated gross annual reporting burden: 48.

PFMI Disclosures

Estimated number of respondents: 1.
Estimated number of reports per respondent: 1.
Average number of hours per report: 200.
Estimated gross annual reporting burden: 200.

Quantitative Disclosures

Estimated number of respondents: 1.
Estimated number of reports per respondent: 1.
Average number of hours per report: 80.
Estimated gross annual reporting burden: 80.

Additionally, the Commission is proposing to add to § 39.37 a notification requirement regarding changes to the PFMI disclosure framework for SIDCOs and subpart C DCOs, which is expected to increase, by one hour, the existing information collection burden of 80 hours per response. The aggregate estimated burden for § 39.37 is stated below:

Subpart C Disclosure Framework Requirements—§ 39.37

Estimated number of respondents: 9.

[81] The current burden for the subpart C Election Form exhibits is 155 hours per response; 22 of these hours are being moved to the Form DCO burden as discussed in the Form DCO section above, leaving 133 hours. Also, the Commission is reducing the burden currently attributed to amendments to the subpart C Election Form and consolidating it with the burden for supplemental information because in practice, DCOs have not frequently filed amendments. Consolidating the certification (2 hours), exhibits (133 hours), and supplemental or amended information (45 hours) results in a burden of 180 hours.

Estimated number of reports per respondent: 1.

Average number of hours per report: 81.

Estimated gross annual reporting burden: 729.

Because the Commission is moving all of the burden estimates for subpart C from OMB control number 3038–0081 to OMB control number 3038–0076 and cancelling information collection 3038–0081, the existing burden estimates for §§ 39.33, 39.36, 39.38, and 39.39, and certain disclosures under § 39.37, as updated to reflect the current number of SIDCOs and subpart C DCOs, are restated below. In addition, for the quantitative disclosures required under § 39.37, which may be updated as frequently as quarterly, the Commission has updated the number of reports per respondent from one to four annually, and has distributed the existing 35 burden hours among the four reports (35/4 = 8.75, rounded to 9). The updated subpart C reporting burden estimates for the changes to subpart C—Provisions is as follows:

Subpart C Financial and Liquidity Resource Documentation—§ 39.33

Estimated number of respondents: 9.

Estimated number of reports per respondent: 1.

Average number of hours per report: 120.

Estimated gross annual reporting burden: 1080.

Subpart C Stress Test Results—§ 39.36

Estimated number of respondents: 9.

Estimated number of reports per respondent: 16.

Average number of hours per report: 14.

Estimated gross annual reporting burden: 2016.

Subpart C Quantitative Disclosures—§ 39.37

Estimated number of respondents: 9.

Estimated number of reports per respondent: 4.

Average number of hours per report: 9.

Estimated gross annual reporting burden: 324.

Subpart C Transaction, Segregation and Portability Disclosures—§ 39.37

Estimated number of respondents: 9.

Estimated number of reports per respondent: 1.

Average number of hours per report: 35.

Estimated gross annual reporting burden: 315.

Subpart C Efficiency and Effectiveness Review—§ 39.38

Estimated number of respondents: 9.

Estimated number of reports per respondent: 1.

Average number of hours per report: 3.

Estimated gross annual reporting burden: 27.

Subpart C Recovery and Wind-down Plan—§ 39.39

Estimated number of respondents: 9.

Estimated number of reports per respondent: 1.

Average number of hours per report: 480.

Estimated gross annual reporting burden: 4,320.

With respect to the subpart C recordkeeping burden that the Commission is moving from OMB control number 3038–0081 to OMB control number 3038–0076, the Commission also has combined the burden estimates for financial and liquidity resources, and liquidity resource due diligence and testing because these requirements apply to the same set of respondents. As noted above, the general recordkeeping requirements that were previously estimated separately for SIDCOs and all subpart C DCOs also have been combined. The updated subpart C recordkeeping burden estimates are restated below:

Subpart C Recordkeeping—General

Estimated number of respondents: 9.

Estimated number of reports per respondent: 110.

Average number of hours per report: 10.

Estimated gross annual recordkeeping burden: 9,900.

Subpart C Recordkeeping—Financial and Liquidity Resources, Liquidity Resource Due Diligence and Testing

Estimated number of respondents: 9.

Estimated number of reports per respondent: 8.

Average number of hours per report: 10.

Estimated gross annual recordkeeping burden: 720.

Request for Comment

The Commission invites the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussed above. The Commission will consider public comments on this proposed collection of information in:

(1) Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

(2) Evaluating the accuracy of the estimated burden of the proposed collection of information, including the degree to which the methodology and the assumptions that the Commission employed were valid;

(3) Enhancing the quality, utility, and clarity of the information proposed to be collected; and

(4) Minimizing the burden of the proposed information collection requirements on registered entities, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques, *e.g.,* permitting electronic submission of responses.

Copies of the submission from the Commission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160 or from *http://RegInfo.gov.* Organizations and individuals desiring to submit comments on the proposed information collection requirements should send those comments to:

- The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Trading Commission;
- (202) 395–6566 (fax); or
- *OIRAsubmissions@omb.eop.gov* (email).

Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rulemaking, and please refer to the **ADDRESSES** section of this rulemaking for instructions on submitting comments to the Commission. OMB is required to make a decision concerning the proposed information collection requirements between 30 and 60 days after publication of this release in the **Federal Register**. Therefore, a comment to OMB is best assured of receiving full consideration if OMB receives it within 30 calendar days of publication of this release. Nothing in the foregoing affects the deadline enumerated above for public comment to the Commission on the proposed rules.

C. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the

CEA or issuing certain orders.[82] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors (collectively referred to herein as section 15(a) factors). The Commission has not identified any impact that the proposed changes to part 39 would have on price discovery. The impact the proposed changes to part 39 would have on the other section 15(a) factors is considered below.

The Commission recognizes that the proposed rules may impose costs. The Commission has endeavored to assess the expected costs and benefits of the proposed rulemaking in quantitative terms, including PRA-related costs, where possible. In situations where the Commission is unable to quantify the costs and benefits, the Commission identifies and considers the costs and benefits of the applicable proposed rules in qualitative terms. The lack of data and information to estimate those costs is attributable in part to the nature of the proposed rules. Additionally, the initial and recurring compliance costs for any particular DCO will depend on the size, existing infrastructure, level of clearing activity, practices, and cost structure of the DCO.

The Commission notes that this consideration is based on its understanding that centralized clearing activity functions internationally with (i) clearing activity that involves U.S. firms occurring across different international jurisdictions; (ii) some entities organized outside the U.S. that are prospective or current Commission registrants; and (iii) some entities typically operating both within and outside of the U.S. who follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, its discussion of costs and benefits refers to the effects of the proposed rules on all activity subject to it, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under section 2(i) of the CEA. In particular, the Commission notes that some DCOs subject to the proposed rules are located outside of the United States.

The Commission generally requests comment on all aspects of its cost-benefit considerations, including the identification and assessment of any costs and benefits not discussed herein; the potential costs and benefits of the alternatives discussed herein; data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the costs and benefits of the proposed rules; and substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's discussion. The Commission welcomes comment on such costs, particularly from existing DCOs that can provide quantitative cost data based on their respective experiences. Commenters may also suggest other alternatives to the proposed approach.

2. Baseline

The baseline for the Commission's consideration of the costs and benefits of this proposed rulemaking are: (1) The DCO Core Principles set forth in section 5b(c)(2) of the CEA; (2) the general provisions applicable to DCOs under subparts A and B of part 39 of the Commission's regulations; (3) the Commission's regulations in subpart C of part 39, which establish additional standards for compliance with the core principles for those DCOs that are designated as SIDCOs or have elected to opt-in to the subpart C requirements in order to achieve status as a QCCP; (4) Form DCO in appendix A to part 39; (5) subpart C Election Form in appendix B to part 39; and (6) §§ 1.20(d) and 140.94.

The Commission notes that some of the proposed rules would codify existing no-action relief and other guidance issued by Commission staff. To the extent that market participants have relied upon such relief or staff guidance, the actual costs and benefits of the proposed rules, as discussed in this section of the proposal, may not be as significant.

3. Written Acknowledgment From Depositories—§ 1.20

a. Benefits

Regulation 1.20(d)(1) requires an FCM to obtain a written acknowledgment from each depository with which the FCM deposits futures customer funds. The regulation provides that an FCM is not required to obtain a written acknowledgment from a DCO that has adopted rules providing for the segregation of customer funds, but other provisions of § 1.20(d) seem to suggest that a DCO must provide the written acknowledgment regardless. The Commission is proposing to amend § 1.20(d) to clarify the Commission's intent that the requirements listed in § 1.20(d)(3) through (6) do not apply to a DCO, or to an FCM that clears through that DCO, if the DCO has adopted rules that provide for the segregation of customer funds. The Commission believes this will benefit FCMs and DCOs by reducing uncertainty as to when an FCM must obtain a written acknowledgment from a DCO.

b. Costs

The Commission does not believe the proposed amendment would impose any additional costs on DCOs or FCMs, as it is clarifying the circumstances under which an acknowledgment letter would not be required.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(B) of the CEA, the Commission believes that the proposed amendments to § 1.20(d) would not negatively impact the protection of market participants and the public, including DCOs' clearing members and their customers, as the proposed amendment merely clarifies the instances in which a DCO, or an FCM that clears through that DCO, would not need to file an acknowledgment letter because the DCO has adopted rules that provide for the segregation of customer funds. The Commission believes that the proposed amendment to § 1.20(d) will result in an incremental increase in efficiency for FCMs that follows from reducing any previous uncertainty regarding when they must obtain an acknowledgement letter. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendment.

4. Definitions—§ 39.2

Regulation 39.2 sets forth definitions applicable to terms used in part 39 of the Commission's regulations. The Commission is proposing amendments to the definition of ''business day,'' ''customer,'' ''customer account or customer origin,'' and ''key personnel'' in § 39.2 to maintain consistency with terms defined elsewhere in Commission regulations and to provide clarity with respect to the use of these terms. The Commission is also adding new definitions for ''enterprise risk

[82] 7 U.S.C. 19(a).

management'' and ''fully-collateralized position'' to correspond with amendments that the Commission is proposing elsewhere in part 39.

a. Benefits

The Commission believes the proposed amendments to § 39.2 would benefit DCOs by clarifying existing part 39 requirements, such as what constitutes a Federal holiday for purposes of applying the definition of ''business day.'' The Commission believes the newly proposed definitions in § 39.2 for ''enterprise risk management'' and ''fully-collateralized positions'' are necessary to understanding the proposed rules for an enterprise risk management framework in proposed § 39.10(d) and proposed exceptions from several requirements for fully-collateralized positions throughout part 39. The proposed amendments to the definitions of ''customer'' and ''customer account or customer origin'' would also help to avoid conflicts with similar terms defined in § 1.3.

b. Costs

The Commission does not believe the proposed new and amended definitions would impose additional costs on DCOs, as they are not imposing additional requirements, but rather defining terms that are used in other provisions.

c. Section 15(a) Factors

In addition to the discussion above, the Commission evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. The Commission believes that DCOs may experience a modest increase in efficiency as a result of the proposed amendments. In consideration of section 15(a)(2)(B) of the CEA, the Commission believes that, to the extent that the amended definitions provide clarity, reduce any previous uncertainty, or help to avoid conflicts with similar terms that are defined in different sections, these effects, individually and in aggregate, may yield increased efficiency. For example, the Commission believes the proposed amendments to the definition of ''business day'' in § 39.2 will better enable DCOs, particularly those located outside of the United States, to easily identify Federal holidays as it relates to their compliance with applicable reporting requirements under part 39. The proposed amendments to § 39.2 would also provide foreign DCOs with greater clarity by excluding ''foreign holidays'' from the definition of ''business day,'' thereby eliminating the requirement to report to the Commission on a non-trading day. After considering the other section 15(a) factors, the Commission believes they are not implicated by the proposed amendments.

5. Procedures for Registration—§ 39.3 and Form DCO

The Commission is proposing several changes to its procedures for DCO registration, including: The manner by which a DCO applicant would file supplemental information in proposed § 39.3(a)(3); procedures in proposed § 39.3(a)(4) to amend a pending application; the potential for an extension of the application review period in proposed § 39.3(a)(6); and the procedures for filing a request for an amended order of registration in proposed § 39.3(d). The Commission is also proposing to codify the statutory requirements in section 7 of the CEA to vacate an order of registration as well as specify the types of information that a DCO must provide to the Commission in this regard in proposed § 39.3(f); and clarify the types of information that a DCO must provide to request a transfer of open interest in proposed § 39.3(g). In addition, the Commission is proposing to revise Form DCO to correspond with proposed amendments to part 39 and to reflect Commission staff's experience with DCO applications.

a. Benefits

The Commission believes the proposed amendments to the DCO registration procedures in § 39.3 and Form DCO will make the procedures more transparent to applicants. This should allow prospective DCO applicants to more efficiently prepare complete applications, which should reduce the need for Commission staff to request additional information after receiving the application and therefore reduce the overall time needed to review an application. For example, the Commission is modifying Form DCO to clarify the types of information that are required and align the exhibits with the amendments proposed under part 39. These proposed amendments may reduce an applicant's time and resources used in responding to staff inquiries during the application review process, as DCO applicants would be better able to provide more complete, accurate, and nuanced application materials. The proposed amendments to § 39.3 would also adapt certain language to better reflect terminology applicable to DCOs in proposed § 39.3(a)(1) and (2) and (b), which could help to avoid confusion for potential DCO applicants and existing DCOs. Furthermore, the Commission is proposing to codify its long-standing procedures for staying an application in proposed § 39.3(a)(6) to provide DCO applicants with greater transparency of the registration process.

The Commission is proposing to amend § 39.3(a)(2) and Form DCO to eliminate the required use of Form DCO to request an amended order of registration from the Commission. This change would better reflect current practice, where a DCO is permitted to file a request for an amended order with the Commission rather than submitting Form DCO. Similarly, the Commission is proposing to specify in proposed § 39.3(f) the types of information that the Commission currently requests to determine whether to vacate an order of registration, which would provide DCOs with more transparency as to the types of information that are required as part of a request to vacate an order of registration. The proposed recordkeeping requirements in § 39.3(f)(1)(iii) and (iv), which would require a vacated DCO to continue to maintain the books and records that it would otherwise be required to maintain as a registered DCO, would provide the benefit of ensuring that a DCO does not vacate its registration and destroy its books and records in order to hinder or avoid Commission action.

The Commission also proposes to streamline the procedures for requesting a transfer of open interest by separating those procedures in existing § 39.3(g) from the procedures to notify the Commission of a DCO corporate structure or ownership change. Under the proposed amendments to § 39.3(g), a DCO seeking to transfer its open interest would be required to submit rules for Commission approval pursuant to § 40.5, rather than submitting a request for an order at least three months prior to the anticipated transfer. This would simplify the existing requirements and permit the transfer to take effect after a 45-day Commission review period. The Commission believes the 45-day period would ensure that clearing members are made aware of the intended transfer and allow the Commission to determine whether the transferee DCO is suitable to accept the transfer.

b. Costs

The Commission believes DCOs would not incur any additional costs associated with the proposed procedures to request an amended order of registration in § 39.3(d), as a DCO would incur the same costs if requesting to amend its order of registration by

using the current Form DCO.[83] As to the procedures to vacate a DCO's registration in proposed § 39.3(f), the Commission believes the costs would not be substantial. Any costs incurred by DCOs would more likely be due to the proposed recordkeeping requirements in § 39.3(f)(1)(iii) and (iv), which would require a vacated DCO to continue to maintain the books and records that it would otherwise be required to maintain as a registered DCO pursuant to § 1.31(b).

Finally, the Commission is proposing to amend § 39.3(g) to permit a DCO seeking to transfer its open interest to submit rules for Commission approval pursuant to § 40.5, rather than submitting a request for an order at least three months prior to the anticipated transfer. The Commission does not anticipate that DCOs would incur any additional costs as a result of these procedural changes beyond the costs to prepare a § 40.5 rule submission, which are likely to be similar to the costs of requesting an order approving the transfer. Additionally, the information requested in proposed § 39.3(g) reflects information that DCOs are already required to provide in order to transfer their open interest. The Commission does not believe DCOs would incur additional costs from any of the other proposed amendments to the DCO registration procedures in § 39.3.

c. Section 15(a) Factors

In addition to the discussion above, the Commission evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. The Commission believes that the proposed changes to the registration procedures will maintain the protection of market participants and the public by ensuring that DCOs are in compliance with the DCO Core Principles and Commission regulations. The proposed changes would also increase efficiency by making the registration process more transparent. This would enable DCOs and DCO applicants to provide more complete documentation in a more concise manner, thereby reducing the time and resources needed to comply with such procedures. To the extent that the proposed changes to the registration procedures act to streamline the application process, as well as to establish the process for vacating a DCO's registration, the net result of those changes would be a more efficient process for registering as a DCO and for vacating that registration.

Additionally, the Commission believes that the proposed amendments to § 39.3(g), which addresses a request to transfer a DCO's open interest, will result in increased efficiency because the proposed amendments streamline and improve the existing process, as DCOs would be able to use the existing process under § 40.5, with which DCOs are already familiar and which requires a shorter review period. As a result, DCOs may obtain approval to transfer their open interest in a timelier manner, which may benefit their operational and business needs. To that end, the Commission believes that these changes will have a beneficial effect on the risk management practices of DCOs, inasmuch as the proposed changes may modestly reduce the risks that may accompany the transfer of open interest to another DCO. Moreover, the proposed recordkeeping requirements for vacated DCOs will protect market participants and the public by ensuring that a DCO does not vacate its registration and destroy its books and records in order to hinder or avoid Commission action. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

6. DCO Chief Compliance Officer—§ 39.10(c)

a. Benefits

The Commission is proposing to amend § 39.10(c) to allow a DCO to have its CCO report to the senior officer responsible for the DCO's clearing activities. This would provide DCOs with flexibility to structure the management and oversight of the CCO based on the DCO's particular corporate structure, size, and complexity. This may increase efficiency, reduce costs, and improve the quality of the oversight of the CCO, as the senior officer overseeing the DCO's clearing activities would be better positioned to provide day-to-day oversight of the CCO.

The Commission is proposing to amend certain requirements in § 39.10(c) relating to the CCO annual report to permit DCOs to incorporate by reference, for up to five years, any descriptions of written policies and procedures that have not materially changed since they were described within the most recent CCO annual report. The ability to incorporate by reference the description of written policies and procedures in the CCO annual report could reduce the time and costs needed to prepare the CCO annual report.[84] The Commission is also proposing to remove the requirement that the DCO submit the CCO annual report at the same time as the DCO's fiscal year-end audited financial statement. This is consistent with the proposed change to § 39.19(c)(3)(iv), which would allow DCOs the flexibility to submit required annual reports and audited year-end financial statements when ready but not later than 90 days after the end of the DCO's fiscal year. The proposed changes recognize that the DCO's year-end audited financial statements are prepared separately from the CCO annual report and therefore would not need to be prepared and submitted together.

b. Costs

The Commission is proposing to amend § 39.10(c) to require that a DCO identify its compliance policies and procedures by name, rule number, or other identifier; describe the process by which the annual report was submitted to the board of directors or senior officer; and allow incorporation by reference in limited circumstances. The Commission notes that a number of DCOs already provide this information. Therefore, the Commission expects that the proposed changes to § 39.10(c) would not impose additional costs on those DCOs.[85]

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) of the CEA, the Commission believes that certain of the proposed changes to § 39.10(c) will enhance the protection of market participants and the public. Specifically, the proposed changes to a CCO's reporting lines, along with the added clarity regarding proper identification of the compliance policies and procedures in the CCO annual report, is anticipated to enhance the compliance function at DCOs, which may have the corresponding effect of improving the protections for market participants and the public. Additionally, in consideration of section 15(a)(2)(B) of the CEA, the proposed amendment to permit incorporation by reference in the CCO annual report will

[83] The Commission estimates for PRA purposes that there would be a reduction in the burden incurred by DCOs, as discussed in section IX.B.1 above.

[84] The Commission estimates for PRA purposes that there would be a reduction in the burden incurred by DCOs, as discussed in section IX.B.2.a above.

[85] The Commission estimates for PRA purposes that there would be a reduction in the burden incurred by DCOs, as discussed in section IX.B.2.a above.

increase efficiency in preparing that report. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

7. Enterprise Risk Management—§ 39.10(d)

a. Benefits

The Commission is proposing § 39.10(d) to require a DCO to have a program of enterprise risk management that identifies and assesses sources of risk and their potential impact on the operations and services of the DCO and identify an enterprise risk officer. The Commission believes that requiring DCOs to establish and maintain an enterprise risk management program in proposed § 39.10(d) may encourage DCOs to strengthen their existing programs, especially if a DCO lacks an enterprise risk management program that is commensurate with industry best practices. This may benefit the resiliency of individual DCOs' operations by requiring DCOs to proactively identify potential risks on an enterprise-wide basis beyond those that a DCO might otherwise identify pursuant to its compliance with specific requirements in part 39. Compliance with proposed § 39.10(d) by DCOs who are affiliated with other registered entities such as DCMs, SEFs, and SDRs could also benefit the financial markets more broadly, as risks identified and addressed by the DCO may also apply to their affiliates within the derivatives markets.

Consistent with § 39.10(b), the Commission does not intend to be overly prescriptive by requiring specific standards and methodologies. Proposed § 39.10(d)(3) would require a DCO to follow generally accepted standards and industry best practices with respect to the development and ongoing monitoring of its enterprise risk management framework, assessment of the performance of the enterprise risk management program, and the management and mitigation of risk to the DCO. The Commission is mindful that best practices evolve and change over time and does not, therefore, wish to prescribe specific standards in its regulations. This flexibility would allow DCOs to continue to develop enterprise risk management programs in a manner best suited for their specific risk exposures, product types, customer bases, market segments, and organizational structures, among other things, as long as their programs meet the proposed minimum standards and any other legal and regulatory requirements.

b. Costs

The Commission has found that DCOs that proactively identify and manage foreseeable risks have generally implemented enterprise risk management frameworks, in whole or in part, to identify, assesses, and manage sources of risk in a manner similar to the requirements proposed in § 39.10(d)(1)–(4). Therefore, the Commission believes that any additional costs associated with these requirements should be minimal relative to existing industry practice for those DCOs whose enterprise risk management programs are commensurate with industry best practices. Additionally, as DCOs would be able to comply with this requirement by including the DCO in the enterprise risk management program administered by the DCO's parent company or affiliate, the Commission believes any additional costs to comply with proposed § 39.10(d) could be reduced if the DCO is able to share the costs of compliance with its parent or affiliates. DCOs that do not have an enterprise risk management program in line with proposed § 39.10(d) or could not otherwise rely on its parent's or affiliate's enterprise risk management program would incur costs to implement such a program.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(D) of the CEA, the Commission believes that the proposal to require a DCO to have a formal enterprise risk management program will improve DCO risk management practices by ensuring that DCOs have a process for identifying and assessing potential risks to the DCO on an enterprise-wide basis, thereby enhancing protection of market participants and the public and the financial integrity of the derivatives markets. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

8. Financial Resources—§ 39.11

a. Benefits

The Commission is proposing certain changes to § 39.11, including: Clarifying how a DCO's largest financial exposure should be calculated in proposed § 39.11(c)(2); requiring a DCO to use the same stress test scenario to combine the customer and house stress test losses of each clearing member in proposed § 39.11(c)(2)(ii); and requiring a DCO to adopt rules to specifically permit the netting of any gains in the house account with customer losses in the event of a member default (and prohibiting a DCO from netting losses in the house account with gains in the customer account consistent with section 4d of the CEA, which requires the segregation of customer funds) in proposed § 39.11(c)(2)(iii).

The Commission believes these proposed adjustments to the methodology used to calculate a DCO's financial resources requirement in § 39.11(c) would focus a DCO's analysis on the resources that would actually be available to it during times of stress. This approach is consistent with recent guidance issued by CPMI–IOSCO suggesting that, when assessing the adequacy of their financial resources, CCPs should take into account only prefunded financial resources and ignore voluntary excess contributions. CCPs that wish to be considered QCCPs are expected to follow this guidance, so having Commission requirements that are consistent with the guidance would benefit DCOs.

Regulation 39.11(d)(2) sets out certain conditions that apply to a DCO's use of assessments for additional guaranty fund contributions in calculating the financial resources available to meet its obligations under § 39.11(a)(1). Regulation 39.11(d)(2)(iv) provides that a DCO shall only count the value of assessments, after a 30 percent haircut, ''to meet up to 20 percent of those obligations.'' The Commission proposes to amend § 39.11(d)(2) to replace the phrase ''those obligations'' with ''the total amount required under paragraph (a)(1) of this section,'' to provide DCOs with more clarity as to how to comply with this requirement.

Furthermore, the Commission is proposing amendments to § 39.11(e)(1)(iii) and (e)(3) to clarify that a DCO may use a committed line of credit or similar facility, in whole or in part, to satisfy § 39.11(e)(1)(ii) or (e)(2), as long as the committed line of credit or similar facility is not counted twice to meet the requirements of § 39.11(e)(1)(ii) and (e)(2). This is a clarification of the existing requirement, which provides a DCO with additional flexibility to optimize the liquidity resources it holds, which would potentially reduce certain opportunity costs associated with holding more expensive types of liquid resources, such as cash.

Regulation 39.11(f)(1)(ii) requires a DCO to file with the Commission a financial statement of the DCO or of its

parent company. The Commission is proposing to amend § 39.11(f)(1)(ii) to require that the financial statement provided be that of the DCO and not the parent company in order to better and more accurately assess the financial strength of the DCO. The Commission believes it would also benefit the DCO to be able to assess its compliance with Core Principle B and § 39.11 and its financial health separately from that of its parent.

The Commission is proposing to amend the periodic financial reporting requirements in § 39.11(f)(1)(ii) and (f)(2)(i) to permit quarterly and annual financial statements to be prepared in accordance with U.S. GAAP for DCOs incorporated or organized under U.S. law and in accordance with either U.S. GAAP or IFRS for DCOs incorporated or organized under the laws of any foreign country. Although Commission regulations generally require financial statements to be prepared in accordance with U.S. GAAP, the Commission has permitted the use of IFRS by non-U.S. DCOs as a condition of each DCO's registration order. The proposed rule would retain this flexibility for non-U.S. DCOs and provide greater transparency to DCOs and DCO applicants of the financial reporting requirements.

In reviewing DCOs' financial statements, Commission staff has noted that the DCO's own capital allocated to meet the requirements of § 39.11(a)(1) or (2) often are not identified accordingly. The Commission therefore is proposing in § 39.11(f)(1)(ii) and (f)(2)(i) to require that assets allocated by the DCO for such purpose must be clearly identified on the DCO's balance sheet as held for that purpose. As a result, DCOs would have the opportunity to more clearly demonstrate that they have satisfied the requirements of § 39.11(a)(1) or (2) and, in doing so, may avoid unnecessary follow-up questions from Commission staff.

The Commission also is proposing to require in § 39.11(f)(2) that, in addition to its audited year-end financial statement, a DCO would be required to submit: (1) A reconciliation, including appropriate explanations, of its balance sheet when material differences exist between it and the balance sheet in the DCO's financial statement for the last quarter of the fiscal year or, if no material differences exist, a statement so indicating, and (2) such further information as may be necessary to make the statements not misleading. Without such an explanation, Commission staff may be under the impression that the representations are false or incorrect. This requirement gives DCOs the opportunity to correct any discrepancies and avoid unnecessary follow-up questions from Commission staff.

Regulation 39.11(f)(3) requires a DCO to provide to the Commission documentation of the DCO's financial resources methodology and basis for valuation and liquidity determinations as part of its quarterly financial reporting. The Commission is proposing to revise § 39.11(f)(3) to provide that a DCO must send this documentation to the Commission only upon the DCO's first submission under § 39.11(f)(1) and in the event of any change thereafter. Not requiring this documentation to be provided each quarter could reduce a DCO's reporting costs.[86]

The Commission is proposing to amend § 39.11(f)(4) to require that DCOs provide a certification as to the accuracy and completeness of the DCO's quarterly financial report filed pursuant to proposed § 39.11(f)(1), annual report filed pursuant to proposed § 39.11(f)(2), and any other reports filed pursuant to proposed § 39.11(f)(3). The Commission believes a certification requirement will provide greater transparency with regard to the submission process and may increase the level of accountability at the DCO, which may lead to greater accuracy in reporting.

b. Costs

DCOs could incur initial costs to recalibrate the method by which they compute their financial resources to comply with proposed § 39.11(c). If a DCO does not have financial resources sufficient to comply with § 39.11(a)(1) based on its computation pursuant to proposed § 39.11(c), the DCO would have to procure additional financial resources. Because DCOs vary in terms of their size and level of clearing activity, the Commission believes they are better positioned to provide cost estimates in this regard.

DCOs may incur costs to prepare their own financial statements (as opposed to financial statements of the parent company) in accordance with proposed § 39.11(f)(1)(ii). For DCOs that already prepare their own financial statements, incremental costs will not be as large as suggested by the regulatory baseline. DCOs may incur minimal costs in identifying in their balance sheet assets allocated to meet the requirements of § 39.11(a)(1) or (2). DCOs may also incur minimal costs to prepare a reconciliation of their balance sheet when material differences exist as compared to the DCO's financial statement for the last quarter of the fiscal year.

The Commission believes DCOs may incur additional costs associated with complying with the proposed certification requirements in § 39.11(f)(4). These costs may be reduced for DCOs that already provide them. The Commission recognizes that a DCO may have to develop a process in certifying its financial reports; however, the Commission believes that these costs may be reduced for DCOs to the extent that they already have this process in place.[87]

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) of the CEA, the Commission believes that the proposed amendments to § 39.11 will result in improved protections for market participants and the public. Specifically, the proposed adjustments to the methodology used to calculate a DCO's financial resources requirement in § 39.11(c) and the corresponding improvements to a DCO's stress testing results are expected to enhance the safety and soundness of DCOs and their ability to manage their risks, thereby better protecting DCOs' clearing members and their customers, market participants, and the public. Additionally, in further consideration of section 15(a)(2)(A) of the CEA, the proposal to require in § 39.11(f)(1)(ii) the financial statement of the DCO and not that of its parent company, is expected to better and more accurately assess the financial strength of the DCO, which will ultimately serve to protect market participants and the public and further the financial integrity of derivatives markets. In consideration of section 15(a)(2)(B) of the CEA, the Commission believes that, to the extent that the proposed amendments to § 39.11 will result in increased clarity or transparency, as explained above, those changes are anticipated to result in an incremental increase in efficiency. In consideration of section 15(a)(2)(D) of the CEA, the Commission believes the proposed adjustments to the methodology used to calculate a DCO's financial resources requirement in § 39.11(c) would focus a DCO's analysis on the resources that would actually be available to it during times of stress, thereby improving the DCO's risk

[86] The Commission estimates for PRA purposes that there would be a reduction in the burden incurred by DCOs, as discussed in section IX.B.2.c.ii above.

[87] *See* 17 CFR 228, 229, 232, 240, 249, 270 and 274.

management practices. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

9. Participant and Product Eligibility—§ 39.12

Regulation 39.12(b)(2) provides that a DCO shall adopt rules providing that all swaps with the same terms and conditions are economically equivalent within the DCO. As it was not the intention of the Commission to require DCOs that do not clear swaps to adopt the rules required under this provision, the Commission is proposing to revise § 39.12(b)(2) so that it explicitly applies only to DCOs that clear swaps. This could reduce rulebook drafting costs for future DCO applicants that do not intend to accept swaps for clearing. The Commission believes the proposed amendments to § 39.12 would not impose costs on DCOs or swaps market participants, as they would not be clearing swaps through a DCO that does not accept swaps for clearing. The Commission has considered the section 15(a) factors and believes that they are not implicated by these proposed amendments.

10. Risk Management—§ 39.13

a. Benefits

Regulation 39.13(g)(2)(i) requires that a DCO have initial margin requirements that are commensurate with the risks of each product and portfolio, including any unusual characteristics of, or risks associated with, particular products or portfolios. The regulation currently notes that such risks include but are not limited to jump-to-default risk or similar jump risk. The Commission is proposing to amend § 39.13(g)(2)(i) to note that such risks also include ''concentration of positions.'' Recent events, including a significant loss from a default at a central counterparty outside of the Commission's jurisdiction, highlight the importance of addressing those risks. This change would serve to benefit DCOs and their clearing members by making the rule more explicit.

Regulation 39.13(g)(3) requires a DCO to have its systems for initial margin requirements reviewed and validated by a qualified and independent party on a regular basis. The Commission is proposing to specify that ''on a regular basis'' means annually. Additionally, § 39.13(g)(3) provides that an employee of the DCO may conduct such independent validations as long as they are not responsible for the development or operation of the systems and models being tested. Proposed § 39.13(g)(3) would expand the pool of eligible employees to include employees of an affiliate of the DCO, which would provide DCOs with greater flexibility in selecting appropriate staff to conduct the validations.

Furthermore, the Commission is proposing new § 39.13(g)(7)(iii) to clarify that, in conducting back tests of initial margin requirements, a DCO should compare portfolio losses only to those components of initial margin that capture changes in market risk factors. This proposal would ensure that back testing of a DCO's initial margin model is more appropriately calibrated.

Regulation 39.13(g)(8)(i) requires a DCO to collect initial margin on a gross basis for each clearing member's customer account(s). Based on feedback received from DCOs, the Commission understands that there are significant operational issues that may affect the ability of clearing members to accurately determine the positions of individual customers on an intraday basis with respect to certain types of transactions (*e.g.,* transfers, give-ups, and allocations of block orders) and with respect to certain types of market participants (*e.g.,* locals and high frequency traders). Therefore, intraday gross margin calculations may result in some clearing members being charged too much margin and others being charged too little margin, which could necessitate significant end-of-day adjustments. Accordingly, the Commission proposes to amend § 39.13(g)(8)(i) to permit a DCO to collect customer initial margin from its clearing members on a gross basis only during its end-of-day settlement cycle. Proposed § 39.13(g)(8)(i) is consistent with market feedback and attempts to provide DCOs with more flexibility in meeting the requirements in light of the operational issues that may arise intraday.

Regulation 39.13(g)(8)(ii) provides that a DCO must require its clearing members to collect customer initial margin from their customers, ''for non-hedge positions, at a level that is greater than 100 percent of the [DCO]'s initial margin requirements with respect to each product and swap portfolio.'' Consistent with interpretative guidance issued by the Division, the Commission is proposing to amend § 39.13(g)(8)(ii) to permit DCOs to establish customer initial margin requirements based on the type of customer account and to apply prudential standards that result in FCMs collecting customer initial margin at levels commensurate with the risk presented by each customer account. The proposed amendments to § 39.13(g)(8)(ii) would give DCOs reasonable discretion in determining the percentage by which customer initial margin requirements must exceed the DCO's clearing initial margin requirements with respect to particular products or portfolios. This approach acknowledges that the existing standard does not appropriately take into account each DCO's particular circumstances and the nature of its clearing members and their customers.

Regulation 39.13(h)(1)(i) requires a DCO to impose risk limits on each clearing member, by house origin and by each customer origin, in order to prevent a clearing member from carrying positions for which the risk exposure exceeds a specified threshold relative to the clearing member's and/or the DCO's financial resources. The Commission is proposing to note that such risk limits should also be imposed to address positions that may be difficult to liquidate. As noted above, recent events highlight the importance of imposing risk limits to address positions that may be difficult to liquidate, particularly concentrated positions. The proposed change would help to ensure that a DCO can properly manage its risks in instances where, for example, a position in a particular contract or swap is concentrated with a particular member, such that there is reason to doubt whether, in the event that this member defaults, other members would be willing and able to accept, collectively, the entirety of that position or swap.

Regulation 39.13(h)(5)(ii) requires a DCO to, on a periodic basis, review the risk management policies, procedures, and practices of each of its clearing members, which address the risks that such clearing members may pose to the DCO, and to document such reviews. The Commission is proposing to clarify that DCOs should, having conducted such reviews, take appropriate actions to address concerns identified in such reviews, and require that the documentation of the reviews should include the basis for determining what action was appropriate to take. Absent such follow-up, the reviews would lack purpose. The proposed change would help to ensure that DCOs are taking steps to manage any risks posed by their members, thereby enhancing the DCO's risk management functions.

b. Costs

The Commission is proposing to amend § 39.13(g)(2)(i) to clarify that a DCO shall have initial margin requirements that are commensurate with the risks of each product and portfolio, including, but not limited to, concentration of positions. The Commission is merely clarifying that

concentrated positions are one of the risks that DCOs should be incorporating in their initial margin requirements. The Commission does not believe that DCOs, or their clearing members, would incur any additional costs with this clarification.

In addition, § 39.13(g)(3) requires that a DCO's systems for generating initial margin requirements, including its theoretical models, be reviewed and validated by a qualified and independent party on a regular basis. The provision further provides that employees of the DCO may conduct the validations as long as they are not responsible for the development or operation of the systems and models being tested. The Commission is proposing to amend § 39.13(g)(3) to specify that ''on a regular basis'' means annually and to also permit employees of an affiliate of the DCO to conduct such independent validations. The Commission believes these amendments would not impose additional costs on DCOs insofar as DCOs were already interpreting ''regular'' to mean annual, but rather may reduce costs by permitting the use of employees of a DCO's affiliate when conducting the independent validations.

The Commission is proposing new § 39.13(g)(7)(iii) to specify that, in conducting back tests of initial margin requirements, a DCO shall compare portfolio losses only to those components of initial margin that capture changes in market risk factors. This change is intended to reflect existing practices; therefore, any costs associated with this change would be reduced for DCOs that already follow this approach.

Regulation 39.13(g)(8)(i) requires a DCO to collect initial margin on a gross basis for each clearing member's customer account(s). As noted above, after the regulation was adopted, Division staff learned of operational issues that DCOs would face if the provision applied to intraday settlements as well as end-of-day settlements. As a result, the Commission proposes to amend § 39.13(g)(8)(i) to permit a DCO to collect customer initial margin from its clearing members on a gross basis only during its end-of-day settlement cycle. Because this change is intended to reflect existing practice, any costs associated with this change would be reduced for those DCOs that already follow this approach.

Regulation 39.13(g)(8)(i)(B) provides that, for purposes of calculating the gross initial margin requirement for clearing members' customer accounts, a DCO may require its clearing members to report to the DCO the gross positions of each individual customer or the sum of the gross positions of its customers. The Commission is proposing amendments to § 39.13(g)(8)(i)(B) to require a DCO to have rules requiring its clearing members to report customer information about futures (as well as swaps) to DCOs. This will enable DCOs, in turn, to report this information to the Commission under § 39.19(c)(1)(i)(D), which, as proposed, would require DCOs to report the positions themselves (*i.e.,* the long and short positions) as well as risk sensitivities and valuation data for end-of-day positions. The Commission believes adopting and implementing such rules could impose nominal cost on DCOs. In addition, clearing members may incur costs associated with reporting this data to the extent they are not already doing so.

The Commission is proposing to amend § 39.13(g)(12) by requiring DCOs to increase the frequency by which they evaluate the appropriateness of haircuts that they apply to initial margin collateral from a quarterly basis to a monthly basis. Because § 39.11(d)(1) already requires that haircuts be evaluated on a monthly basis for assets that are used to meet the DCO's financial resources obligations set forth in § 39.11(a), and those resources include initial margin, the Commission does not believe this change will result in any increase in costs.

In § 39.13(h)(1)(i), the Commission is proposing to require that, in determining a clearing member's risk limits under existing § 39.13(h)(1)(i), the factors that a DCO considers must include the difficulty of liquidating the clearing member's positions. The Commission believes that this change may impose minimal costs.

In § 39.13(h)(5)(ii), the Commission is proposing to clarify that a DCO should take appropriate actions to address concerns identified in its review of the risk management policies of its clearing members. The Commission believes that DCOs already do this as part of their compliance with existing § 39.13(h)(5)(ii).

In § 39.13(i), the Commission is proposing to require a DCO to provide certain information as part of a rule filing submitted for Commission approval pursuant to § 40.5 to facilitate the Commission's review of a DCO's cross-margining program. This information includes: Identification of the products that would be eligible for cross-margining; analysis of the risk characteristics, the liquidity of the respective markets, and availability of reliable prices; financial and operational requirements that would apply to clearing members participating in the program; a description and analysis of the margin methodology that would be used to calculate initial margin requirements; procedures the DCO would follow in the event of a clearing member default; a description of the arrangements for obtaining daily position data with respect to products in the account; whether funds to support the cross-margined positions will be maintained together in one account or in separate accounts at each participating clearing organization; and a copy of the agreement between the clearing organizations participating in the cross-margining program. A DCO may incur costs to prepare and provide this information.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) and (D) of the CEA, the Commission believes that the proposed amendments to § 39.13 will aid in the protection of market participants and the public by enhancing certain risk management requirements of DCOs. For example, proposed § 39.13(g)(12) would require DCOs to increase the frequency by which they evaluate the appropriateness of haircuts that they apply to initial margin collateral. Given that initial margin is held for risk management purposes, assessing haircuts more frequently would enhance a DCO's ability to manage its risks. In addition, the proposed amendments to § 39.13 will help preserve the efficiency and financial integrity of the derivatives markets by enhancing certain risk management requirements of DCOs. For example, in consideration of section 15(a)(2)(B) of the CEA, the Commission believes the proposed amendments to § 39.13(h)(1)(i), which would specify that a DCO's risk limits should address positions that may be difficult to liquidate, would help to ensure that a DCO can properly manage its risks in the event of a default, thereby promoting the financial integrity of the derivatives markets. The Commission also believes that the amendments to § 39.13 will strengthen and promote sound risk management practices across DCOs, their clearing members, and clearing members' customers. Specifically, the amendments enhance, clarify, and provide flexibility in complying with several DCO risk management requirements, which will aid DCOs in efficiently allocating their risk management attention and resources. Finally, in consideration of

section 15(a)(2)(E) of the CEA, the Commission notes the public interest in promoting and protecting public confidence in the safety and security of the financial markets. DCOs are essential to risk management in the financial markets, both systemically and on an individual firm level. The proposed amendments, by enhancing, clarifying, and providing flexibility beyond current requirements, promote the ability of DCOs to perform these risk management functions. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

11. Treatment of Funds—§ 39.15

a. Benefits

The Commission is proposing to amend § 39.15(b)(1) to clarify that ''funds and assets'' are equivalent to ''money, securities, and property,'' which would better align the language of § 39.15(b)(1) with the language in the CEA. Furthermore, § 39.15(b)(2)(ii) requires a DCO to file a petition for an order pursuant to section 4d(a) of the CEA in order for the DCO and its clearing members to commingle customer positions in futures, options, and swaps in a futures customer account subject to section 4d(a) of the CEA The Commission is proposing to amend § 39.15(b)(2)(ii) to permit a DCO to file rules for Commission approval pursuant to § 40.5 in order for the DCO and its clearing members to commingle such positions. This would better align the requirements of § 39.15(b)(2)(ii) with § 39.15(b)(2)(i), which requires a DCO that wants to commingle futures, options, and swaps in a cleared swaps customer account to file rules for Commission approval. This approach would reduce the burden on DCOs while providing the Commission with sufficient means to determine whether the customer funds will be adequately protected.

Regulation 39.15(d) requires a DCO to have rules providing for the prompt transfer of all or a portion of a customer's portfolio of positions and related funds at the same time from the carrying clearing member to another clearing member, without requiring the close-out and re-booking of the positions prior to the requested transfer. Based on feedback received from DCOs, the Commission is proposing to amend § 39.15(d) to delete the words ''at the same time,'' thus requiring the ''prompt,'' but not necessarily simultaneous, transfer of a customer's positions and related funds. The Commission is further amending the provision to require the transfer of related funds ''as necessary,'' recognizing that the transfer of customer positions will not always require the transfer of funds. These changes are meant to reflect common practice and provide greater flexibility to DCOs in transferring positions and funds. The Commission is also proposing to amend § 39.15(e), which relates to permitted investments of customer funds, to clarify that the regulation applies to any investment of customer funds or assets, including cleared swaps customer collateral, as defined in § 22.1. At the time § 39.15(e) was adopted, the Commission had not yet adopted regulations concerning cleared swaps customer funds but intended for § 39.15(e) to also apply to those funds. This change would ensure that cleared swaps customer collateral receives the same safekeeping as other funds and assets invested by DCOs and would reflect the Commission's intent.

b. Costs

The Commission believes proposed amendments to § 39.15(b)(2)(ii) to permit a DCO to file rules for Commission approval pursuant to § 40.5 in order for the DCO and its clearing members to commingle certain customer positions would streamline the procedures for a request to commingle customer funds and would not increase costs to DCOs. As discussed above, the proposal would potentially reduce costs for DCOs that would otherwise have to petition the Commission for an order providing relief from section 4d of the CEA in order to commingle such customer funds. The Commission has not identified any other costs associated with the proposed amendments to § 39.15, including costs to customers in this regard.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) of the CEA, the Commission believes that the proposed amendments to § 39.15 will aid in the protection of market participants and the public, specifically customers of clearing members, by providing clarity on several requirements related to the treatment of customer funds, including with respect to the transfer of customer positions and funds under § 39.15(d). Moreover, the proposed amendments will promote efficiency in the derivatives markets by streamlining the procedures for a request to commingle customer funds, as DCOs would be permitted to file rules for Commission approval whether requesting to commingle customer funds in a futures or cleared swaps customer account. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

12. Default Rules and Procedures—§ 39.16

a. Benefits

The Commission is proposing to amend § 39.16 to improve DCOs' default management processes by, among other things: Requiring a DCO to include its clearing members in an annual test of its default management plan in proposed § 39.16(b); requiring the DCO to establish a default committee, which must include clearing members and other participants, that would convene in the event of a default involving substantial or complex positions to help identify any market issues that the DCO is considering in proposed § 39.16(c)(1); and requiring a DCO's default management procedures to include immediately posting a declaration of a default on the DCO's website in proposed § 39.16(c)(2)(ii). The proposed amendments are intended to ensure that clearing members are prepared in the event of a default.

The Commission is also proposing to amend § 39.16(c)(2)(iii)(C) to require any allocation of a defaulting clearing member's positions to be proportional to the size of the participating or accepting clearing member's positions in the same product class at the DCO. This proposed amendment would ensure that clearing members have the flexibility, but not the requirement, to participate in auctions and allocations beyond the proportional size of their respective positions as measured by the initial margin requirement for those positions. This ensures that clearing members cannot be forced to involuntarily absorb positions of a defaulting member which incentivizes the DCO to calibrate its risk management mechanisms in a manner to avoid a scenario in which clearing members' participation in an auction or allocation falls short of the size of the defaulting clearing member's positions in that product class.

b. Costs

To comply with the proposal to require the participation of clearing members in a test of a DCO's default management plan and in a DCO's default committee, a DCO may incur costs to coordinate clearing members' participation and to establish a default committee. However, the Commission

believes that many DCOs already involve clearing members in their tests as a matter of best practice. The Commission is not aware of a less costly alternative that would provide clearing members with an opportunity to participate in key aspects of a DCO's default management.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) of the CEA, the Commission believes that the proposed amendments to § 39.16(c)(2)(ii) to require that a DCO have default procedures that include immediate public notice on the DCO's website of a declaration of default will aid in the protection of market participants and the public by ensuring more timely notice of a default. In further consideration of section 15(a)(2)(A) of the CEA, the Commission believes the proposed amendments to § 39.16(c)(2)(iii)(C) regarding the allocation of a defaulting clearing member's positions would protect clearing members from involuntarily having to bid on or accept defaulting positions that are not in proportion to the size of their positions in that product class, while also providing clearing members with the flexibility to voluntarily bid on or accept more than a proportional share of the defaulting positions if that clearing member has the ability to manage the risk of those new positions. In consideration of section 15(a)(2)(B) and (D) of the CEA, the Commission believes the additional amendments to § 39.16(b) and (c)(1) support the financial integrity of the derivatives markets and promote sound risk management practices by requiring DCOs to have greater clearing member participation in their default management processes and procedures. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

13. Rule Enforcement—§ 39.17

a. Benefits

Regulation 39.17(a) codifies Core Principle H, which requires a DCO to maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and dispute resolution. The Commission is proposing a technical change to § 39.17(a)(1) to emphasize that a DCO is required to monitor and enforce compliance by both itself and its members with the DCO's rules. The Commission is also proposing to amend § 39.17(b), which permits a DCO's board of directors to delegate its responsibility for compliance with the requirements of § 39.17(a) to the DCO's risk management committee, to allow a DCO to delegate such responsibility to a committee other than the risk management committee. This would allow DCOs more discretion in delegating this function to the most appropriate committee.

b. Costs

The Commission does not believe the proposed amendments to § 39.17(a)(1) or (b) will impose any additional costs on DCOs or their members because the changes are technical in nature.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(D) of the CEA, the Commission believes that the proposed amendments to § 39.17 will promote sound risk management practices by emphasizing the importance of compliance with DCO rules and by providing DCOs with additional flexibility in structuring their governance arrangements. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

14. Reporting—§ 39.19

a. Benefits

The Commission is proposing several amendments to § 39.19 to add new requirements, clarify certain existing requirements, and incorporate other proposed amendments to part 39. The proposed amendments to § 39.19 would assist DCOs by codifying the bulk of DCOs' ongoing reporting requirements in one section of part 39 and providing additional detail with respect to certain requirements. In some cases, the Commission is proposing to adopt additional reporting requirements that would allow the Commission to conduct more effective oversight of DCOs' compliance with the DCO Core Principles and Commission regulations.

As part of the daily reporting requirements, the Commission is proposing to amend § 39.19(c)(1)(i)(A)–(C) to specify that a DCO is required to report margin, cash flow, and position information by individual customer account. The Commission believes the ability to analyze positions at the customer level is a crucial element of an effective risk surveillance program. The ability to identify those customers whose positions create the most risk to a DCO's clearing members would assist the Commission in determining whether adequate measures are in place to address those risks and whether the Commission needs to take proactive steps to see that those risks are mitigated, thereby enhancing the protections afforded to the markets generally. The Commission is also proposing to amend § 39.19(c)(1)(i)(D) to specify that, with respect to end-of-day position information, DCOs must report the positions themselves (*i.e.,* the long and short positions) as well as risk sensitivities and valuation data for these positions.[88] This information will better inform staff of the assumptions incorporated into the position information. The Commission is also proposing to amend § 39.19(c)(1)(i)(D) to have DCOs provide any legal entity identifiers and internally-generated identifiers within each customer origin for each clearing member, which would help identify customers across clearing members and DCOs.

The Commission is proposing to add certain event-specific reporting requirements, including: A decrease in liquidity resources in proposed § 39.19(c)(4)(ii); a legal name change in proposed § 39.19(c)(4)(xi); a change in any liquidity funding arrangement in proposed § 39.19(c)(4)(xiii); a change in settlement bank arrangements in proposed § 39.19(c)(4)(xiv); a change in a DCO's arrangements with its depositories that hold customer funds in proposed § 39.19(c)(4)(xvi); a change in the DCO's fiscal year end in proposed § 39.19(c)(4)(xx); a change in the DCO's accounting firm in proposed § 39.19(c)(4)(xxi); major decisions of the DCO's board in proposed § 39.19(c)(4)(xxii); issues with a DCO's margin model in proposed § 39.19(c)(4)(xxiv) or settlement bank in proposed § 39.19(c)(4)(xv); and new futures or option products accepted for clearing by the DCO in proposed § 39.19(c)(4)(xxvi). The Commission believes it is important for it to be aware of these changes due to their potential impact on a DCO's operations.

b. Costs

The Commission expects a minimal cost burden with respect to the proposed changes to the event-specific reporting requirements under § 39.19(c)(4), in part because the incidents that would trigger such

[88] The Commission estimates for PRA purposes that there would be an increase in the burden incurred by DCOs, as discussed in section IX.B.2.d above.

reporting do not occur very often. Furthermore, where reporting is required under § 39.19(c)(4), a DCO is required to provide a brief notice with only the pertinent details of the incident. Therefore, the Commission believes any costs imposed by these changes would be nominal.

With respect to daily reporting requirements, the Commission understands that most DCOs already report the information that would be required. Because staff guidance regarding the format and manner of this reporting is periodically updated, the Commission understands that there may be costs associated with making technical changes to accommodate these updates. The Commission requests an estimate of any such costs from DCOs that currently report this information.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) and (D) of the CEA, the Commission believes that the proposed amendments to § 39.19 will promote the protection of market participants and the public and contribute to sound risk management practices by providing the Commission with timely information that is critical to its risk surveillance efforts. Also, in consideration of section 15(a)(2)(D) of the CEA, the Commission believes that requiring DCOs to provide notice to the Commission of certain additional events under § 39.19, such as a decrease in liquidity resources, settlement bank issues, and margin model issues, could further incentivize DCOs to avoid those risks, or to mitigate them more effectively if they do occur. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

15. Public Information—§ 39.21

a. Benefits

The Commission is proposing to amend the public reporting requirements of § 39.21 to require that DCOs make each of the items of information listed in proposed § 39.21(c) [89] available separately on the DCO's website instead of merely including them in the DCO's rulebook. This would assist DCOs' current and prospective clearing members and the general public in locating the relevant information. Furthermore, § 39.21(c)(4) requires a DCO to publicly disclose the size and composition of its financial resource package available in the event of a clearing member default. To address questions concerning how often this information must be updated, the Commission is proposing to amend § 39.21(c)(4) to clarify that it should be updated quarterly, consistent with § 39.11(f)(1)(i)(A), which requires a DCO to report this information to the Commission each fiscal quarter. The proposed change would assist DCOs in complying with this requirement, while ensuring consistent and timely disclosure to the public.

b. Costs

Because the proposed amendments to § 39.21 merely require a DCO to separately make public information that would otherwise be made public in its rulebook, the Commission anticipates any additional costs to DCOs would be minimal.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A), (B), and (D) of the CEA, the Commission believes that the proposed amendments to § 39.21 would enhance existing protection of market participants and the public; promote the efficiency and financial integrity of the derivatives markets; and aid in sound risk management practices by ensuring that key public information about the DCO's operations is readily accessible, complete, and current. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

16. Governance Fitness Standards, Conflicts of Interest, and Composition of Governing Boards—§§ 39.24, 39.25, and 39.26

a. Benefits

The Commission is proposing to remove § 39.32, which sets forth requirements for governance arrangements for SIDCOs and subpart C DCOs, and adopt new §§ 39.24, 39.25, and 39.26, which would incorporate all of the requirements of § 39.32. All DCOs, including SIDCOs and subpart C DCOs, would be subject to the same governance fitness standards, conflict of interest requirements, and board composition requirements, which most DCOs already meet in order to be considered a QCCP. This would give DCOs clear direction on how to comply with Core Principles O, P, and Q,[90] the only DCO Core Principles for which the Commission has yet to adopt implementing regulations. Further, consistent with Core Principle Q, proposed § 39.26 would require that a DCO's governing board or committee includes market participants. Because the Commission has become aware of issues in interpreting this requirement, the Commission proposes to define ''market participant,'' as well as specify that market participation is required on the DCO's governing board or governing committee, *i.e.,* the group with the ultimate decision-making authority. This would avoid ambiguity and provide DCOs with greater clarity.

b. Costs

DCOs may incur costs to comply with the proposed requirements in §§ 39.24, 39.25, and 39.26.[91] Some DCOs must already comply with these standards and will not face incremental costs. The language that is proposed to be adopted in §§ 39.24, 39.25, and 39.26 is essentially the same as that which is included in § 39.32. Regulation 39.32 is applicable to SIDCOs and subpart C DCOs and implements guidance from the PFMIs with which a CCP must comply in order to be considered a QCCP. Non-U.S. DCOs that are neither SIDCOs nor subpart C DCOs are generally held to these requirements by their home country regulators for the same reason. The Commission believes these standards are appropriate for all DCOs and incorporate best practices within the clearing industry.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. Although the Commission believes that most, if not all, DCOs already comply with these

[89] Regulation 39.21(c) requires a DCO to disclose publicly and to the Commission information concerning: (1) The terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO; (2) each clearing and other fee that the DCO charges its clearing members; (3) the margin-setting methodology; (4) the size and composition of the financial resource package available in the event of a clearing member default; (5) daily settlement prices, volume, and open interest for each contract, agreement, or transaction cleared or settled by the DCO; (6) the DCO's rules and procedures for defaults in accordance with § 39.16; and (7) any other matter that is relevant to participation in the clearing and settlement activities of the DCO.

[90] Core Principles O, P, and Q respectively address governance arrangements, conflicts of interest, and composition of governing boards.

[91] The Commission estimates for PRA purposes that there would be an increase in the burden incurred by DCOs, as discussed in section IX.B.2.g above.

requirements, to the extent they do not, the Commission believes the adoption of §§ 39.24, 39.25, and 39.26 would improve DCO risk management practices by promoting transparency of governance arrangements and making sure that the interests of a DCO's clearing members and, where relevant, their customers are taken into account. This would further enhance the protection of market participants and the public and the financial integrity of the derivatives markets.

17. Legal Risk—§ 39.27

The Commission is proposing to amend § 39.27(c) to require a DCO that provides clearing services outside the United States to ensure that the memorandum required in Exhibit R of Form DCO remains accurate and up-to-date. This would ensure that the DCO remains aware of any potential choice of law issues that may impact the enforceability of the DCO's rules, procedures, and contracts in all relevant jurisdictions. The Commission believes this requirement would not impose additional costs on DCOs that already maintain compliance with § 39.27(c), as DCOs with prudent risk management practices should continuously assess their rules, procedures, and policies against the laws and regulations of the jurisdictions in which they operate. For the same reason, the Commission does not anticipate that this requirement will have a direct impact on any of the section 15(a) factors.

18. Fully-Collateralized Positions—§§ 39.2, 39.11, 39.12, 39.13, and 39.19

a. Benefits

As discussed above, fully-collateralized positions do not expose DCOs to many of the risks that traditionally margined products do. Full collateralization prevents a DCO from being exposed to credit risk stemming from the inability of a clearing member or customer of a clearing member to meet a margin call or a call for additional capital. This limited exposure and full collateralization of that exposure renders certain provisions of part 39 inapplicable or unnecessary. As a result, the Division has granted relief from certain provisions of part 39 to DCOs that clear fully-collateralized positions. The Commission is proposing to codify this relief in order to provide greater clarity to DCOs and future applicants for DCO registration regarding how the regulations in part 39 apply to DCOs that clear fully-collateralized positions. DCOs that clear fully-collateralized positions would no longer need to request relief from certain part 39 requirements nor attempt to comply with those requirements, thereby conserving such DCOs' time and resources.

b. Costs

The Commission does not anticipate any costs associated with these amendments, as the proposed rules remove requirements that need not apply to fully-collateralized positions.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(B) of the CEA, the Commission believes that the proposal to codify relief that the Commission has granted to DCOs that clear fully-collateralized positions from requirements that do not apply to these positions, may increase operational efficiency for such DCOs. The proposed amendments should not impact the protection of market participants and the public, the financial integrity of markets, or sound risk management practices, as the requirements that the Commission is proposing to exclude for fully-collateralized positions do not further these factors when applied to such positions. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

19. Provisions Applicable to SIDCOs and DCOs That Elect To Be Subject to the Provisions—§§ 39.33, 39.36, 39.37, and Subpart C Election Form

a. Benefits

Regulation 39.33(a)(1) requires a SIDCO or a subpart C DCO that is systemically important in multiple jurisdictions, or that is involved in activities with a more complex risk profile, to maintain financial resources sufficient to enable it to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined loss in extreme but plausible market conditions. The Commission is proposing to amend § 39.33(a)(1) by replacing the phrase ''largest combined loss'' with ''largest combined financial exposure'' in order to be consistent with Core Principle B and § 39.11(a)(1) regarding DCO financial resources requirements. The Commission is also proposing to amend § 39.33(c)(1) to clarify that the ''largest aggregate liquidity obligation'' means the total amount of cash, in each relevant currency, that the defaulted clearing member would be required to pay to the DCO. Proposed § 39.33(c)(1) would reduce currency risk for SIDCOs and subpart C DCOs by ensuring that these DCOs have sufficient liquidity in the relevant currency of corresponding obligations during the time it would take to liquidate or auction a defaulted clearing member's positions. The Commission is also proposing to amend § 39.33(d) to require that a SIDCO use available Federal Reserve Bank accounts and services where practical. This requirement would further enhance a SIDCO's financial integrity and management of liquidity risk, thereby promoting the financial integrity of the derivatives markets, while permitting SIDCOs to consider lower cost alternatives where appropriate.

Furthermore, the Commission is proposing to amend § 39.36(b)(2)(ii) to replace the words ''produce accurate results'' with ''react appropriately'' to better reflect that the purpose of a sensitivity analysis is to assess whether the margin model will react appropriately to changes of inputs, parameters, and assumptions, thereby enhancing the overall margin coverage. The Commission is also proposing to amend § 39.36(d), which requires each SIDCO and subpart C DCO to ''regularly'' conduct an assessment of the theoretical and empirical properties of its margin model for all products it clears, to clarify that the assessment should be conducted on at least an annual basis or more frequently if there are material relevant market developments. This would ensure that SIDCOs and subpart C DCOs continue to test their margin model with sufficient frequency.

Under § 39.37, a SIDCO or a subpart C DCO is required to publicly disclose its responses to the CPMI–IOSCO Disclosure Framework [92] and, in order to ensure the continued accuracy and usefulness of its responses, to review and update them at least every two years and following material changes to the SIDCO's or subpart C DCO's system or environment in which it operates. The Commission is proposing to amend § 39.37(b) to additionally require that a SIDCO or a subpart C DCO notify the Commission no later than ten business days after any updates to its responses to the CPMI–IOSCO Disclosure Framework to reflect material changes to the DCO's system or environment. The notice would need to identify changes made since the latest version of

[92] *See* CMPI–IOSCO, Principles for Financial Market Infrastructures: Disclosure Framework and Assessment Methodology (Dec. 2012), available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD396.pdf.*

the responses. The Commission is also proposing to amend § 39.37(c) to explicitly state that a SIDCO or a subpart C DCO must disclose relevant basic data on transaction volume and values that are consistent with the standards set forth in the CPMI–IOSCO Public Quantitative Disclosure Standards for Central Counterparties. These proposed amendments would be consistent with SIDCOs' and subpart C DCOs' existing CPMI–IOSCO obligations.

The Commission is proposing to amend the subpart C Election Form to better reflect the requirements in subpart C of part 39 and to more closely align the format of the subpart C Election Form with Form DCO by specifying the information and/or documentation that must be provided by a DCO as part of its petition for subpart C election. Currently, unlike Form DCO, the subpart C Election Form references the corresponding regulations in subpart C but does not specify the type or level of information that must be filed as an exhibit. The proposed amendments are intended to provide greater transparency and clarity as to the type of information required.

b. Costs

Because most of the proposed changes to subpart C of part 39 are meant to clarify existing requirements, the Commission does not expect that SIDCOs and subpart C DCOs would incur additional costs. Where reporting is required under proposed § 39.37(b), the Commission believes any cost associated with such notice would be nominal for SIDCOs and subpart C DCOs, as they would already be required to periodically update the information publicly.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) and (B) of the CEA, respectively, the Commission believes that the proposed amendments would protect market participants and the public, and promote the financial integrity of SIDCOs and the derivatives markets by, for example, clarifying SIDCO financial resources requirements, requiring the use of central bank accounts, where practical, and ensuring that SIDCOs continue to test their margin models with sufficient frequency. Moreover, in consideration of section 15(a)(2)(D) of the CEA, the Commission believes the proposed amendments to § 39.33(c)(1) would promote sound risk management policies by reducing currency risk for SIDCOs and subpart C DCOs by ensuring that these DCOs have sufficient liquidity in the relevant currency of corresponding obligations during the time it would take to liquidate or auction a defaulted clearing member's positions. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the proposed amendments.

20. Part 140—Organization, Functions, and Procedures of the Commission

a. Benefits

The Commission is proposing to amend § 140.94 to provide the Director of the Division with delegated authority to review DCO registration applications, determine whether an application is materially complete, request additional information in support of an application, stay the running of the 180-day review period for an application, and request additional information in support of a rule submission. The Commission believes that DCOs would benefit from the proposed delegation of authority, as it would promote a more efficient process to address these aspects of registration and rule certification.

b. Costs

The Commission has not identified any costs on DCOs or their members associated with the proposed amendments to § 140.94.

c. Section 15(a) Factors

The Commission has considered the section 15(a) factors and believes that they are not implicated by this proposed amendment.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation.[93]

The Commission believes that the public interest to be protected by the antitrust laws is generally the promotion of competition. The Commission requests comment on whether the proposed rulemaking implicates any other specific public interest to be protected by the antitrust laws. The Commission has considered the proposed rulemaking to determine whether it is anticompetitive and has identified no anticompetitive effects. The Commission requests comment on whether the proposed rulemaking is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has determined that the proposed rules are not anticompetitive and have no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting the proposed rules.

[93] 7 U.S.C. 19(b).

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Definitions, Reporting and recordkeeping requirements, Swaps.

17 CFR Part 39

Application form, Business and industry, Commodity futures, Consumer protection, Default rules and procedures, Definitions, Enforcement authority, Participant and product eligibility, Reporting and recordkeeping requirements, Risk management, Settlement procedures, Swaps, Treatment of funds.

17 CFR Part 140

Authority delegations (Government agencies), Conflict of interests, Organization and functions (Government agencies).

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR chapter I as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24 (2012).

■ 2. In § 1.20, revise paragraphs (d)(1), (7), and (8) introductory text to read as follows:

§ 1.20 Futures customer funds to be segregated and separately accounted for.

* * * * *

(d) * * *

(1) A futures commission merchant must obtain a written acknowledgment from each bank, trust company, derivatives clearing organization, or

futures commission merchant prior to or contemporaneously with the opening of an account by the futures commission merchant with such depositories; *provided, however,* that a written acknowledgment need not be obtained from a derivatives clearing organization that has adopted and submitted to the Commission rules that provide for the segregation of futures customer funds in accordance with all relevant provisions of the Act and the rules in this chapter, and orders promulgated thereunder, and in such cases, the requirements set forth in paragraphs (d)(3) through (6) of this section shall not apply to the futures commission merchant.

* * * * *

(7) Where a written acknowledgment is required, the futures commission merchant shall promptly file a copy of the written acknowledgment with the Commission in the format and manner specified by the Commission no later than three business days after the opening of the account or the execution of a new written acknowledgment for an existing account, as applicable.

(8) Where a written acknowledgment is required, a futures commission merchant shall obtain a new written acknowledgment within 120 days of any changes in the following:

* * * * *

■ 3. In § 1.59, revise paragraph (a)(1) to read as follows:

§ 1.59 Activities of self-regulatory organization employees, governing board members, committee members, and consultants.

(a) * * *

(1) *Self-regulatory organization* means a ''self-regulatory organization,'' as defined in § 1.3.

* * * * *

■ 4. In § 1.63, revise paragraph (a)(1) to read as follows:

§ 1.63 Service on self-regulatory organization governing boards or committees by persons with disciplinary histories.

(a) * * *

(1) *Self-regulatory organization* means a ''self-regulatory organization,'' as defined in § 1.3, except as defined in paragraph (b)(6) of this section.

* * * * *

■ 5. In § 1.64, revise paragraph (a)(1) to read as follows:

§ 1.64 Composition of various self-regulatory organization governing boards and major disciplinary committees.

(a) * * *

(1) *Self-regulatory organization* means ''self-regulatory organization,'' as defined in § 1.3.

* * * * *

■ 6. In § 1.69, revise paragraph (a)(7) to read as follows:

§ 1.69 Voting by interested members of self-regulatory organization governing boards and various committees.

(a) * * *

(7) *Self-regulatory organization* means a ''self-regulatory organization,'' as defined in § 1.3, but excludes registered futures associations for the purposes of paragraph (b)(2) of this section.

* * * * *

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

■ 7. The authority citation for part 39 continues to read as follows:

Authority: 7 U.S.C. 2, 7a–1, and 12a; 12 U.S.C. 5464; 15 U.S.C. 8325.

■ 8. Revise § 39.2 to read as follows:

§ 39.2 Definitions.

For the purposes of this part:

Activity with a more complex risk profile includes:

(1) Clearing credit default swaps, credit default futures, or derivatives that reference either credit default swaps or credit default futures and

(2) Any other activity designated as such by the Commission pursuant to § 39.33(a)(3).

Back test means a test that compares a derivatives clearing organization's initial margin requirements with historical price changes to determine the extent of actual margin coverage.

Business day means the intraday period of time starting at the business hour of 8:15 a.m. and ending at the business hour of 4:45 p.m., on all days except Saturdays, Sundays, Federal holidays established under 5 U.S.C. 6103, and foreign holidays. For purposes of this provision, a foreign holiday is a day on which a derivatives clearing organization and its domestic financial markets are closed for a holiday that is not a Federal holiday in the United States.

Customer account or customer origin means ''customer account'' as defined in § 1.3 of this chapter.

Depository institution has the meaning set forth in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).

Enterprise risk management means an enterprise-wide strategic business process intended to identify potential events that may affect the enterprise and to manage the probability or impact of those events on the enterprise as a whole, such that the overall risk remains within the enterprise's risk appetite and provides reasonable assurance that the derivatives clearing organization can continue to achieve its objectives.

Fully-collateralized position means a contract cleared by a derivatives clearing organization that requires the derivatives clearing organization to hold, at all times, funds in the form of the required payment sufficient to cover the maximum possible loss that a counterparty could incur upon liquidation or expiration of the contract.

House account or house origin means a clearing member account which is not subject to section 4d(a) or 4d(f) of the Act.

Key personnel means derivatives clearing organization personnel who play a significant role in the operations of the derivatives clearing organization, the provision of clearing and settlement services, risk management, or oversight of compliance with the Act and Commission regulations in this chapter, and orders promulgated thereunder. Key personnel include, but are not limited to, those persons who are or perform the functions of any of the following: Chief executive officer; president; chief compliance officer; chief operating officer; chief risk officer; chief financial officer; chief technology officer; chief information security officer; and emergency contacts or persons who are responsible for business continuity or disaster recovery planning or program execution.

Stress test means a test that compares the impact of potential extreme price moves, changes in option volatility, and/or changes in other inputs that affect the value of a position, to the financial resources of a derivatives clearing organization, clearing member, or large trader, to determine the adequacy of the financial resources of such entities.

Subpart C derivatives clearing organization means any derivatives clearing organization, as defined in section 1a(15) of the Act and § 1.3 of this chapter, which:

(1) Is registered as a derivatives clearing organization under section 5b of the Act;

(2) Is not a systemically important derivatives clearing organization; and

(3) Has become subject to the provisions of subpart C of this part, pursuant to § 39.31.

Systemically important derivatives clearing organization means a financial market utility that is a derivatives clearing organization registered under section 5b of the Act, which is currently designated by the Financial Stability Oversight Council to be systemically important and for which the Commission acts as the Supervisory Agency pursuant to 12 U.S.C. 5462(8).

Trust company means a trust company that is a member of the Federal Reserve System, under section 1 of the Federal Reserve Act (12 U.S.C. 221), but that does not meet the definition of depository institution as set out in this section.

U.S. branch or agency of a foreign banking organization means the U.S. branch or agency of a foreign banking organization as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

■ 9. Revise § 39.3 to read as follows:

§ 39.3 Procedures for registration.

(a) *Application for registration*—(1) *General procedure.* An entity seeking to register as a derivatives clearing organization shall file an application for registration with the Secretary of the Commission in the format and manner specified by the Commission. The Commission will review the application for registration as a derivatives clearing organization pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Act, and may approve or deny the application. If the Commission approves the application, the Commission will register the applicant as a derivatives clearing organization subject to conditions as appropriate.

(2) *Application.* Any entity seeking to register as a derivatives clearing organization shall submit to the Commission a completed Form DCO, which shall include a cover sheet, all applicable exhibits, and any supplemental materials, as provided in appendix A to this part (application). The Commission will not commence processing an application unless the applicant has filed the application as required by this section. Failure to file a completed application will preclude the Commission from determining that an application is materially complete, as provided in section 6(a) of the Act. Upon its own initiative, an applicant may file with its completed application additional information that may be necessary or helpful to the Commission in processing the application.

(3) *Submission of supplemental information.* The filing of a completed application is a minimum requirement and does not create a presumption that the application is materially complete or that supplemental information will not be required. At any time during the application review process, the Commission may request that the applicant provide supplemental information in order for the Commission to process the application. The applicant shall provide supplemental information in the format and manner specified by the Commission.

(4) *Application amendments.* An applicant shall promptly amend its application if it discovers a material omission or error, or if there is a material change in the information provided to the Commission in the application or other information provided in connection with the application. An applicant is only required to submit exhibits and other information that are relevant to the application amendment when filing a Form DCO for the purpose of amending its pending application.

(5) *Public information.* The following sections of all applications to become a registered derivatives clearing organization will be public: First page of the Form DCO cover sheet (up to and including the General Information section), Exhibit A–1 (regulatory compliance chart), Exhibit A–2 (proposed rulebook), Exhibit A–3 (narrative summary of proposed clearing activities), Exhibit A–7 (documents setting forth the applicant's corporate organizational structure), Exhibit A–8 (documents establishing the applicant's legal status and certificate(s) of good standing or its equivalent), and any other part of the application not covered by a request for confidential treatment, subject to § 145.9 of this chapter.

(6) *Extension of time for review.* The Commission may further extend the review period in paragraph (a)(1) of this section for any period of time to which the applicant agrees in writing.

(b) *Stay of application review*—(1) *By the Commission.* The Commission may stay the running of the 180-day review period if an application is materially incomplete, in accordance with section 6(a) of the Act.

(2) *Delegation of authority.* (i) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Risk or the Director's designee, with the concurrence of the General Counsel or the General Counsel's designee, the authority to notify an applicant seeking registration as a derivatives clearing organization that the application is materially incomplete and the running of the 180-day period under section 6(a) of the Act is stayed.

(ii) The Director of the Division of Clearing and Risk may submit to the Commission for its consideration any matter which has been delegated in this paragraph (b)(2).

(iii) Nothing in this paragraph (b)(2) prohibits the Commission, at its election, from exercising the authority delegated in paragraph (b)(2)(i) of this section.

(c) *Withdrawal of application for registration.* An applicant for registration may withdraw its application submitted pursuant to paragraph (a) of this section by filing such a request with the Secretary of the Commission in the format and manner specified by the Commission. Withdrawal of an application for registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the application for registration was pending with the Commission.

(d) *Amendment of an order of registration.* (1) A derivatives clearing organization requesting an amendment to an order of registration shall file the request with the Secretary of the Commission in the form and manner specified by the Commission.

(2) A derivatives clearing organization shall provide to the Commission, upon the Commission's request, any additional information and documentation necessary to review a request to amend an order of registration.

(3) The Commission shall issue an amended order of registration upon a Commission determination, in its own discretion, that the derivatives clearing organization would maintain compliance with the Act and the Commission's regulations in this chapter upon amendment to the order. If deemed appropriate, the Commission may issue an amended order of registration subject to conditions.

(4) The Commission may decline to issue an amended order based upon a Commission determination, in its own discretion, that the derivatives clearing organization would not continue to maintain compliance with the Act and the Commission's regulations in this chapter upon amendment to the order.

(e) *Reinstatement of dormant registration.* Before accepting products for clearing, a dormant derivatives clearing organization as defined in § 40.1 of this chapter must reinstate its registration under the procedures of paragraph (a) of this section; provided, however, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

(f) *Vacation of registration*—(1) *Request.* A registered derivatives clearing organization may have its registration vacated pursuant to section 7 of the Act by submitting a request to the Secretary of the Commission in the format and manner specified by the Commission. A vacation of registration shall not affect any action taken or to be

taken by the Commission based upon actions, activities or events occurring during the time that the derivatives clearing organization was registered with the Commission. The request shall include:

(i) The date that the vacation should take effect, which must be at least ninety days after the request was submitted;

(ii) A description of how the derivatives clearing organization intends to transfer or otherwise unwind all open positions at the derivatives clearing organization and how such actions reflect the interests of affected clearing members and their customers;

(iii) A statement that the derivatives clearing organization will continue to maintain its books and records for the requisite statutory and regulatory retention periods after its registration has been vacated; and

(iv) A statement that the derivatives clearing organization will continue to make its books and records available for inspection by any representative of the Commission or the United States Department of Justice after its registration has been vacated, as required by § 1.31 of this chapter.

(2) *Notice to registered entities.* The Commission shall fulfill its obligation to send a copy of the request and the order of vacation to all other registered entities by posting the documents on the Commission website.

(g) *Request for transfer of open interest*—(1) *Submission.* A derivatives clearing organization seeking to transfer its positions comprising open interest for clearing and settlement to another derivatives clearing organization shall submit rules for Commission approval pursuant to § 40.5 of this chapter.

(2) *Required information.* The rule submission shall include, at a minimum, the following:

(i) The underlying agreement that governs the transfer;

(ii) A description of the transfer, including the reason for the transfer and the impact of the transfer on the rights and obligations of clearing members and market participants holding the positions that comprise the derivatives clearing organization's open interest;

(iii) A discussion of the transferee's ability to comply with the Act, including the core principles applicable to derivatives clearing organizations, and the Commission's regulations in this chapter;

(iv) The transferee's rules marked to show changes that would result from acceptance of the transferred positions;

(v) A list of products for which the derivatives clearing organization requests transfer of open interest; and

(vi) A representation by the transferee that it is in and will maintain compliance with the Act, including the core principles applicable to derivatives clearing organizations, and the Commission's regulations in this chapter upon the transfer of the open interest.

(3) *Commission action.* The Commission may request additional information in support of a rule submission filed under paragraph (g)(1) of this section, and may grant approval of the rules in accordance with § 40.5 of this chapter.

■ 10. In § 39.4, revise paragraphs (a) and (e) to read as follows:

§ 39.4 Procedures for implementing derivatives clearing organization rules and clearing new products.

(a) *Request for approval of rules.* A registered derivatives clearing organization may request, pursuant to the procedures of § 40.5 of this chapter, that the Commission approve any or all of its rules and subsequent amendments thereto, including operational rules, prior to their implementation or, notwithstanding the provisions of section 5c(c)(2) of the Act, at any time thereafter, under the procedures of § 40.5 of this chapter. A derivatives clearing organization may label as ''approved by the Commission'' only those rules that have been so approved.

* * * * *

(e) *Holding securities in a futures portfolio margining account.* A derivatives clearing organization seeking to provide a portfolio margining program under which securities would be held in a futures account as defined in § 1.3 of this chapter, shall submit rules to implement such portfolio margining program for Commission approval in accordance with § 40.5 of this chapter. Concurrent with the submission of such rules for Commission approval, the derivatives clearing organization shall petition the Commission for an order under section 4d(a) of the Act.

■ 11. In § 39.10, revise paragraphs (c)(1), (3) and (4) and add paragraph (d) to read as follows:

§ 39.10 Compliance with core principles.

* * * * *

(c) * * *

(1) *Designation.* Each derivatives clearing organization shall establish the position of chief compliance officer, designate an individual to serve as the chief compliance officer, and provide the chief compliance officer with full responsibility and authority to develop and enforce, in consultation with the board of directors or the senior officer, appropriate compliance policies and procedures, to fulfill the duties set forth in the Act and Commission regulations in this chapter.

(i) The individual designated to serve as chief compliance officer shall have the background and skills appropriate for fulfilling the responsibilities of the position. No individual who would be disqualified from registration under sections 8a(2) or 8a(3) of the Act may serve as the chief compliance officer.

(ii) The chief compliance officer shall report to the board of directors or the senior officer of the derivatives clearing organization or, if the derivatives clearing organization engages in substantial activities not related to clearing, the senior officer responsible for the derivatives clearing organization's clearing activities. The board of directors or the senior officer shall approve the compensation of the chief compliance officer.

(iii) The chief compliance officer shall meet with the board of directors or the senior officer at least once a year.

(iv) A change in the designation of the individual serving as the chief compliance officer of the derivatives clearing organization shall be reported to the Commission in accordance with the requirements of § 39.19(c)(4)(x).

* * * * *

(3) *Annual report.* The chief compliance officer shall, not less than annually, prepare and sign a written report that covers the most recently completed fiscal year of the derivatives clearing organization. The annual report shall, at a minimum:

(i) Contain a description of the derivatives clearing organization's written policies and procedures, including the code of ethics and conflict of interest policies; provided that, to the extent that the derivatives clearing organization's written policies and procedures have not materially changed since they were most recently described in an annual report to the Commission, and if the annual report containing the most recent description was submitted within the last five years, the annual report may instead incorporate by reference the relevant descriptions from the most recent annual report containing the description;

(ii) Review each core principle and applicable Commission regulation in this chapter including, in the case of systemically important derivatives clearing organizations and subpart C derivatives clearing organizations, regulations in subpart C of this part, and with respect to each:

(A) Identify, by name, rule number, or other identifier, the compliance policies

and procedures that are designed to ensure compliance with each core principle and applicable regulation in this chapter;

(B) Provide an assessment as to the effectiveness of these policies and procedures;

(C) Discuss areas for improvement, and recommend potential or prospective changes or improvements to the derivatives clearing organization's compliance program and resources allocated to compliance;

(iii) List any material changes to compliance policies and procedures since the last annual report;

(iv) Describe the financial, managerial, and operational resources set aside for compliance with the Act and Commission regulations in this chapter; and

(v) Describe any material compliance matters, including incidents of noncompliance, since the date of the last annual report, and describe the corresponding action taken.

(4) *Submission of annual report to the Commission.* (i) Prior to submitting the annual report to the Commission, the chief compliance officer shall provide the annual report to the board of directors or the senior officer of the derivatives clearing organization or, if the derivatives clearing organization engages in substantial activities not related to clearing, the senior officer responsible for the derivatives clearing organization's clearing activities, for review. Submission of the report to the board of directors or the senior officer shall be recorded in the board minutes or otherwise, as evidence of compliance with the requirement in this paragraph (c)(4)(i). The annual report shall describe the process by which it was submitted to the board of directors or the senior officer, including the date of submission.

(ii) The annual report shall be submitted to the Secretary of the Commission in the format and manner specified by the Commission not more than 90 days after the end of the derivatives clearing organization's fiscal year. The report shall include a certification by the chief compliance officer that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the annual report is accurate and complete.

(iii) The derivatives clearing organization shall promptly submit an amended annual report if material errors or omissions in the report are identified after submission. An amendment must contain the certification required under paragraph(c)(4)(ii) of this section.

(iv) A derivatives clearing organization may request from the Commission an extension of time to submit its annual report in accordance with § 39.19(c)(3).

* * * * *

(d) *Enterprise risk management*—(1) *General.* A derivatives clearing organization shall have an enterprise risk management program that identifies and assesses sources of risk and their potential impact on the operations and services of the derivatives clearing organization. The derivatives clearing organization shall measure, monitor, and manage identified sources of risk on an ongoing basis, including through the development and use of appropriate information systems. The derivatives clearing organization shall test the effectiveness of any mitigating controls employed to reduce identified sources of risk to ensure that the risks are properly mitigated.

(2) *Enterprise risk management framework.* A derivatives clearing organization shall establish and maintain written policies and procedures, approved by its board of directors or a committee of the board of directors that establish an appropriate enterprise risk management framework. The framework shall be reviewed at least annually by the board of directors or committee of the board of directors and updated as necessary.

(3) *Standards for enterprise risk management framework.* A derivatives clearing organization shall follow generally accepted standards and industry best practices in the development and review of its enterprise risk management framework, assessment of the performance of its enterprise risk management program, and management and mitigation of risk to the derivatives clearing organization.

(4) *Enterprise risk officer.* A derivatives clearing organization shall identify as its enterprise risk officer an appropriate individual that exercises the full responsibility and authority to manage the enterprise risk management program of the derivatives clearing organization. The enterprise risk officer shall have the authority, independence, resources, expertise, and access to relevant information necessary to fulfil the responsibilities of the position consistent with the requirements of this section.

■ 12. Revise § 39.11 to read as follows:

§ 39.11 Financial resources.

(a) *General.* A derivatives clearing organization shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization. A derivatives clearing organization shall maintain sufficient financial resources to cover its exposures with a high degree of confidence. At a minimum, each derivatives clearing organization shall possess financial resources that exceed the total amount that would:

(1) Enable the derivatives clearing organization to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the derivatives clearing organization in extreme but plausible market conditions; Provided that if a clearing member controls another clearing member or is under common control with another clearing member, the affiliated clearing members shall be deemed to be a single clearing member for purposes of the provision in this paragraph (a)(1); and

(2) Enable the derivatives clearing organization to cover its operating costs for a period of at least one year, calculated on a rolling basis. A derivatives clearing organization shall identify and adequately manage its general business risks and hold sufficient liquid resources to cover potential business losses that are not related to clearing members' defaults, so that the derivatives clearing organization can continue to provide services as a going concern.

(b) *Types of financial resources.* (1) Financial resources available to satisfy the requirements of paragraph (a)(1) of this section may include:

(i) The derivatives clearing organization's own capital;

(ii) Guaranty fund deposits;

(iii) Default insurance;

(iv) Potential assessments for additional guaranty fund contributions, if permitted by the derivatives clearing organization's rules; and

(v) Any other financial resource deemed acceptable by the Commission.

(2) Financial resources available to satisfy the requirements of paragraph (a)(2) of this section shall include:

(i) The derivatives clearing organization's own capital; and

(ii) Any other financial resource deemed acceptable to the Commission.

(3) A financial resource may be allocated, in whole or in part, to satisfy the requirements of either paragraph (a)(1) or (2) of this section, but not both paragraphs, and only to the extent the use of such financial resource is not otherwise limited by the Act, Commission regulations in this chapter, the derivatives clearing organization's rules, or any other contractual arrangements to which the derivatives clearing organization is a party.

(c) *Calculation of financial resources requirements.* (1) A derivatives clearing organization shall, on a monthly basis, perform stress tests that will allow it to make a reasonable calculation of the financial resources needed to meet the requirements of paragraph (a)(1) of this section. The derivatives clearing organization shall have reasonable discretion in determining the methodology used to calculate the requirements, subject to the limitations identified in paragraph (c)(2) of this section, and provided that the methodology must take into account both historical data and hypothetical scenarios. The Commission may review the methodology and require changes as appropriate. The requirements of this paragraph (c) do not apply to fully-collateralized positions.

(2) When calculating its largest financial exposure, a derivatives clearing organization:

(i) In netting its exposure against the clearing member's initial margin, shall:

(A) Use that portion of the margin amount on deposit that is required; and

(B) Use customer initial margin only to the extent permitted by parts 1 and 22 of this chapter, as applicable;

(ii) Shall combine the customer and house stress test losses of each clearing member using the same stress test scenarios;

(iii) May net any gains in the house account with losses in the customer account, if permitted by the derivatives clearing organization's rules, but shall not net losses in the house account with gains in the customer account; and

(iv) With respect to a clearing member's cleared swaps customer account, may net gains for one customer against losses for another customer only to the extent permitted by the derivatives clearing organization's rules.

(3) A derivatives clearing organization shall, on a monthly basis, make a reasonable calculation of its projected operating costs over a 12-month period in order to determine the amount needed to meet the requirements of paragraph (a)(2) of this section. The derivatives clearing organization shall have reasonable discretion in determining the methodology used to compute such projected operating costs. The Commission may review the methodology and require changes as appropriate.

(d) *Valuation of financial resources.* (1) At appropriate intervals, but not less than monthly, a derivatives clearing organization shall compute the current market value of each financial resource used to meet its obligations under paragraph (a) of this section. Reductions in value to reflect credit, market, and liquidity risks (haircuts) shall be applied as appropriate and evaluated on a monthly basis.

(2) If assessments for additional guaranty fund contributions are permitted by the derivatives clearing organization's rules, in calculating the financial resources available to meet its obligations under paragraph (a)(1) of this section:

(i) The derivatives clearing organization shall have rules requiring that its clearing members have the ability to meet an assessment within the time frame of a normal end-of-day variation settlement cycle;

(ii) The derivatives clearing organization shall monitor the financial and operational capacity of its clearing members to meet potential assessments;

(iii) The derivatives clearing organization shall apply a 30 percent haircut to the value of potential assessments; and

(iv) The derivatives clearing organization shall only count the value of assessments, after the haircut, to meet up to 20 percent of the total amount required under paragraph (a)(1) of this section.

(e) *Liquidity of financial resources.* (1)(i) The derivatives clearing organization shall effectively measure, monitor, and manage its liquidity risks, maintaining sufficient liquid resources such that it can, at a minimum, fulfill its cash obligations when due. The derivatives clearing organization shall hold assets in a manner where the risk of loss or of delay in its access to them is minimized.

(ii) The financial resources allocated by the derivatives clearing organization to meet the requirements of paragraph (a)(1) of this section shall be sufficiently liquid to enable the derivatives clearing organization to fulfill its obligations as a central counterparty during a one-day settlement cycle. The derivatives clearing organization shall maintain cash, U.S. Treasury obligations, or high quality, liquid, general obligations of a sovereign nation, in an amount greater than or equal to an amount calculated as follows:

(A) Calculate the average daily settlement variation pay for each clearing member over the last fiscal quarter;

(B) Calculate the sum of those average daily settlement variation pays; and

(C) Using that sum, calculate the average of its clearing members' average daily settlement variation pays.

(iii) If the total amount of the financial resources required pursuant to the calculation set forth in paragraph (e)(1)(ii) of this section is insufficient to enable the derivatives clearing organization to fulfill its obligations during a one-day settlement cycle, the derivatives clearing organization may take into account a committed line of credit or similar facility for the purpose of meeting the remainder of the requirement of this paragraph (e) (subject to the limitation in paragraph (e)(3) of this section).

(iv) A derivatives clearing organization is not subject to paragraph (e)(1)(ii) of this section for fully-collateralized positions.

(2) The financial resources allocated by the derivatives clearing organization to meet the requirements of paragraph (a)(2) of this section must include unencumbered, liquid financial assets (*i.e.,* cash and/or highly liquid securities) sufficient to enable the derivatives clearing organization to cover its operating costs for a period of at least six months. If the financial resources allocated to meet the requirements of paragraph (a)(2) of this section do not include such assets in a sufficient amount, the derivatives clearing organization may take into account a committed line of credit or similar facility for the purpose of meeting the requirements of this paragraph (subject to the limitation in paragraph (e)(3) of this section).

(3) A committed line of credit or similar facility may be allocated, in whole or in part, to satisfy the requirements of either paragraph (e)(1)(ii) or (e)(2) of this section, but not both paragraphs.

(4)(i) Assets in a guaranty fund shall have minimal credit, market, and liquidity risks and shall be readily accessible on a same-day basis;

(ii) Cash balances shall be invested or placed in safekeeping in a manner that bears little or no principal risk; and

(iii) Letters of credit shall not be a permissible asset for a guaranty fund.

(f) *Reporting requirements*—(1) *Quarterly reporting.* Each fiscal quarter, or at any time upon Commission request, a derivatives clearing organization shall:

(i) Report to the Commission:

(A) The amount of financial resources necessary to meet the requirements of paragraph (a) of this section and §§ 39.33(a) and 39.39(d), if applicable;

(B) The value of each financial resource available, computed in accordance with the requirements of paragraph (d) of this section; and

(C) The manner in which the derivatives clearing organization meets the liquidity requirements of paragraph (e) of this section.

(ii) Provide the Commission with a financial statement, including the balance sheet, income statement, and

statement of cash flows, prepared in accordance with U.S. generally accepted accounting principles, of the derivatives clearing organization; *provided, however,* that for a derivatives clearing organization that is incorporated or organized under the laws of any foreign country, the financial statement may be prepared in accordance with either U.S. generally accepted accounting principles or the International Financial Reporting Standards issued by the International Accounting Standards Board. The balance sheet must identify any assets allocated to satisfy the requirements of paragraph (a)(1) or (2) of this section as held for that purpose; and

(iii) Report to the Commission the value of each individual clearing member's guaranty fund deposit, if the derivatives clearing organization reports having guaranty fund deposits as a financial resource available to satisfy the requirements of paragraph (a)(1) of this section and §§ 39.33(a) and 39.39(d), if applicable.

(iv) The calculations required by this paragraph (f) shall be made as of the last business day of the derivatives clearing organization's fiscal quarter. The report shall be submitted not later than 17 business days after the end of the derivatives clearing organization's fiscal quarter, or at such later time as the Commission may permit, in its discretion, upon request by the derivatives clearing organization.

(2) *Annual reporting.* (i) A derivatives clearing organization shall submit to the Commission an audited year-end financial statement of the derivatives clearing organization calculated in accordance with U.S. generally accepted accounting principles; provided, however, that for a derivatives clearing organization that is incorporated or organized under the laws of any foreign country, the financial statement may be prepared in accordance with either U.S. generally accepted accounting principles or the International Financial Reporting Standards issued by the International Accounting Standards Board. The balance sheet must identify any assets allocated to satisfy the requirements of paragraph (a)(1) or (2) of this section as held for that purpose.

(ii) The report required by paragraph (f)(2)(i) of this section shall be submitted not later than 90 days after the end of the derivatives clearing organization's fiscal year, or at such later time as the Commission may permit, in its discretion, upon request by the derivatives clearing organization.

(iii) A derivatives clearing organization shall submit concurrently with the audited year-end financial statement required by paragraph (f)(2)(i) of this section:

(A) A reconciliation, including appropriate explanations, of its balance sheet in the audited year-end financial statement with the balance sheet in the derivatives clearing organization's financial statement for the last quarter of the fiscal year when material differences exist or, if no material differences exist, a statement so indicating; and

(B) Such further information as may be necessary to make the statements not misleading.

(3) *Other reporting.* (i) A derivatives clearing organization shall provide to the Commission as part of its first report under paragraph (f)(1) of this section, and in the event of any change thereafter:

(A) Sufficient documentation explaining the methodology used to compute its financial resources requirements under paragraph (a) of this section and §§ 39.33(a) and 39.39(d), if applicable; and

(B) Sufficient documentation explaining the basis for its determinations regarding the valuation and liquidity requirements set forth in paragraphs (d) and (e) of this section.

(ii) A derivatives clearing organization shall provide to the Commission copies of any agreements establishing or amending a credit facility, insurance coverage, or other arrangement evidencing or otherwise supporting the derivatives clearing organization's conclusions regarding its:

(A) Financial resources available to satisfy the requirements of paragraph (a) of this section and §§ 39.33(a) and 39.39(d), if applicable; and

(B) Liquidity resources available to satisfy the requirements of paragraph (e) of this section and § 39.33(c), if applicable.

(4) *Certification.* A derivatives clearing organization shall provide with each report submitted pursuant to this section a certification by the person responsible for the accuracy and completeness of the report that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the information contained in the report is accurate and complete.

■ 13. In § 39.12, revise paragraphs (a) introductory text, (a)(1) introductory text, (a)(1)(i), (a)(4), (5) and (6), (b)(1) introductory text, and (b)(2) to read as follows:

§ 39.12 Participant and product eligibility.

(a) *Participant eligibility.* A derivatives clearing organization shall have appropriate admission and continuing participation requirements for clearing members of the derivatives clearing organization that are objective, publicly disclosed, and risk-based.

(1) *Fair and open access for participation.* The participation requirements shall permit fair and open access.

(i) A derivatives clearing organization shall not have restrictive clearing member standards if less restrictive requirements that achieve the same objective and that would not materially increase risk to the derivatives clearing organization or clearing members could be adopted;

* * * * *

(4) *Monitoring.* A derivatives clearing organization shall have procedures to verify, on an ongoing basis, the compliance of each clearing member with each participation requirement of the derivatives clearing organization.

(5) *Reporting.* (i) A derivatives clearing organization shall require all clearing members, including non-futures commission merchants, to provide to the derivatives clearing organization periodic financial reports that contain any financial information that the derivatives clearing organization determines is necessary to assess whether participation requirements are being met on an ongoing basis.

(ii) A derivatives clearing organization shall require clearing members that are futures commission merchants to provide the financial reports that are specified in § 1.10 of this chapter to the derivatives clearing organization.

(iii) A derivatives clearing organization shall require clearing members that are not futures commission merchants to make the periodic financial reports provided pursuant to paragraph (a)(5)(i) of this section available to the Commission upon the Commission's request or, in lieu of imposing the requirement in this paragraph (a)(5)(iii), a derivatives clearing organization may provide such financial reports directly to the Commission upon the Commission's request.

(iv) A derivatives clearing organization shall have rules that require clearing members to provide to the derivatives clearing organization, in a timely manner, information that concerns any financial or business developments that may materially affect the clearing members' ability to continue to comply with participation requirements under this section.

(v) The requirements in paragraphs (a)(5)(i) and (iii) of this section shall not apply with respect to non-futures commission merchant clearing members of a derivatives clearing organization

that only clear fully-collateralized positions.

(6) *Enforcement.* A derivatives clearing organization shall have the ability to enforce compliance with its participation requirements and shall have procedures for the suspension and orderly removal of clearing members that no longer meet the requirements.

(b) * * *

(1) A derivatives clearing organization shall have appropriate requirements for determining the eligibility of agreements, contracts, or transactions submitted to the derivatives clearing organization for clearing, taking into account the derivatives clearing organization's ability to manage the risks associated with such agreements, contracts, or transactions. Factors to be considered in determining product eligibility include, but are not limited to:

* * * * *

(2) A derivatives clearing organization that clears swaps shall have rules providing that all swaps with the same terms and conditions, as defined by product specifications established under derivatives clearing organization rules, submitted to the derivatives clearing organization for clearing are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization.

* * * * *

■ 14. In § 39.13, revise paragraphs (b), (f), (g)(2)(i), (g)(3), (g)(4)(i) introductory text, (g)(7), (8) and (12), (h)(1)(i) introductory text, and (h)(3) and (5) and add paragraph (i) to read as follows:

§ 39.13 Risk management.

* * * * *

(b) *Risk management framework.* A derivatives clearing organization shall have and implement written policies, procedures, and controls, approved by its board of directors, that establish an appropriate risk management framework that, at a minimum, clearly identifies and documents the range of risks to which the derivatives clearing organization is exposed, addresses the monitoring and management of the entirety of those risks, and provides a mechanism for internal audit. The risk management framework shall be regularly reviewed and updated as necessary.

* * * * *

(f) *Limitation of exposure to potential losses from defaults.* A derivatives clearing organization, through margin requirements and other risk control mechanisms, shall limit its exposure to potential losses from defaults by its clearing members to minimize the risk that:

(1) The operations of the derivatives clearing organization would be disrupted; and

(2) Non-defaulting clearing members would be exposed to losses that non-defaulting clearing members cannot anticipate or control.

(g) * * *

(2) * * *

(i) A derivatives clearing organization shall have initial margin requirements that are commensurate with the risks of each product and portfolio, including any unusual characteristics of, or risks associated with, particular products or portfolios, including but not limited to jump-to-default risk or similar jump risk, and concentration of positions.

* * * * *

(3) *Independent validation.* A derivatives clearing organization shall have its systems for generating initial margin requirements, including its theoretical models, reviewed and validated by a qualified and independent party on an annual basis. Such qualified and independent parties may be independent contractors or employees of the derivatives clearing organization, or of an affiliate of the derivatives clearing organization, but shall not be persons responsible for development or operation of the systems and models being tested.

(4) * * *

(i) A derivatives clearing organization may allow reductions in initial margin requirements for related positions if the price risks with respect to such positions are significantly and reliably correlated. The price risks of different positions will only be considered to be reliably correlated if there is a conceptual basis for the correlation in addition to an exhibited statistical correlation. That conceptual basis may include, but is not limited to, the following:

* * * * *

(7) *Back tests.* A derivatives clearing organization shall conduct back tests, as defined in § 39.2, using an appropriate time period but not less than the previous 30 days, as follows:

(i) On a daily basis, a derivatives clearing organization shall conduct back tests with respect to products or swap portfolios that are experiencing significant market volatility, to test the adequacy of its initial margin requirements, as follows:

(A) For that product if the derivatives clearing organization uses a product-based margin methodology;

(B) For each spread involving that product if there is a defined spread margin rate;

(C) For each account held by a clearing member at the derivatives clearing organization that contains a significant position in that product, by house origin and by each customer origin; and

(D) For each such swap portfolio, including any portfolio containing futures and/or options and held in a commingled account pursuant to § 39.15(b)(2), by beneficial owner.

(ii) On at least a monthly basis, a derivatives clearing organization shall conduct back tests to test the adequacy of its initial margin requirements, as follows:

(A) For each product for which the derivatives clearing organization uses a product-based margin methodology;

(B) For each spread for which there is a defined spread margin rate;

(C) For each account held by a clearing member at the derivatives clearing organization, by house origin and by each customer origin; and

(D) For each swap portfolio, including any portfolio containing futures and/or options and held in a commingled account pursuant to § 39.15(b)(2), by beneficial owner.

(iii) In conducting back tests of initial margin requirements, a derivatives clearing organization shall compare portfolio losses only to those components of initial margin that capture changes in market risk factors.

(8) *Customer margin*—(i) *Gross margin.* (A) During the end-of-day settlement cycle, a derivatives clearing organization shall collect initial margin on a gross basis for each clearing member's customer account(s) equal to the sum of the initial margin amounts that would be required by the derivatives clearing organization for each individual customer within that account if each individual customer were a clearing member.

(B) For purposes of calculating the gross initial margin requirement for each clearing member's customer account(s), a derivatives clearing organization shall have rules that require its clearing members to provide to the derivatives clearing organization reports each day setting forth end-of-day gross positions of each beneficial owner within each customer origin of the clearing member.

(C) A derivatives clearing organization may not, and may not permit its clearing members to, net positions of different customers against one another.

(D) A derivatives clearing organization may collect initial margin for its clearing members' house accounts on a net basis.

(ii) *Customer initial margin requirements.* A derivatives clearing

organization shall require its clearing members to collect customer initial margin at a level that is not less than 100 percent of the derivatives clearing organization's clearing initial margin requirements with respect to each product and portfolio and commensurate with the risk presented by each customer account. The derivatives clearing organization shall have reasonable discretion in determining whether and by how much such customer initial margin requirements must exceed the derivatives clearing organization's clearing initial margin requirements with respect to particular products or portfolios. The Commission may review such customer initial margin levels and require different levels if the Commission deems the levels insufficient to protect the financial integrity of the derivatives clearing organization or its clearing members.

(iii) *Withdrawal of customer initial margin.* A derivatives clearing organization shall require its clearing members to ensure that their customers do not withdraw funds from their accounts with such clearing members unless the net liquidating value plus the margin deposits remaining in a customer's account after such withdrawal are sufficient to meet the customer initial margin requirements with respect to all products and swap portfolios held in such customer's account which are cleared by the derivatives clearing organization.

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(12) *Haircuts.* A derivatives clearing organization shall apply appropriate reductions in value to reflect credit, market, and liquidity risks (haircuts), to the assets that it accepts in satisfaction of initial margin obligations, taking into consideration stressed market conditions, and shall evaluate the appropriateness of the haircuts on at least a monthly basis.

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(h) * * *

(1) * * *

(i) A derivatives clearing organization shall impose risk limits on each clearing member, by house origin and by each customer origin, in order to prevent a clearing member from carrying positions for which the risk exposure exceeds a specified threshold relative to the clearing member's and/or the derivatives clearing organization's financial resources, and to address positions that may be difficult to liquidate. The derivatives clearing organization shall have reasonable discretion in determining:

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(3) *Stress tests.* A derivatives clearing organization shall conduct stress tests, as defined in § 39.2, as follows:

(i) On a daily basis, a derivatives clearing organization shall conduct stress tests with respect to each large trader who poses significant risk to a clearing member or the derivatives clearing organization, including futures, options, and swaps cleared by the derivatives clearing organization, which are held by all clearing members carrying accounts for each such large trader. The derivatives clearing organization shall have reasonable discretion in determining which traders to test and the methodology used to conduct such stress tests. The Commission may review the selection of accounts and the methodology and require changes, as appropriate.

(ii) On at least a weekly basis, a derivatives clearing organization shall conduct stress tests with respect to each clearing member account, by house origin and by each customer origin, and each swap portfolio, including any portfolio containing futures and/or options and held in a commingled account pursuant to § 39.15(b)(2), by beneficial owner, under extreme but plausible market conditions. The derivatives clearing organization shall have reasonable discretion in determining the methodology used to conduct such stress tests. The Commission may review the methodology and require changes, as appropriate.

(iii) The requirements in paragraphs (h)(3)(i) and (ii) of this section do not apply with respect to clearing member accounts that hold only fully-collateralized positions.

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(5) *Clearing members' risk management policies and procedures.* (i) A derivatives clearing organization shall have rules that:

(A) Require its clearing members to maintain current written risk management policies and procedures, which address the risks that such clearing members may pose to the derivatives clearing organization;

(B) Ensure that it has the authority to request and obtain information and documents from its clearing members regarding their risk management policies, procedures, and practices, including, but not limited to, information and documents relating to the liquidity of their financial resources and their settlement procedures; and

(C) Require its clearing members to make information and documents regarding their risk management policies, procedures, and practices available to the Commission upon the Commission's request.

(ii) A derivatives clearing organization shall review the risk management policies, procedures, and practices of each of its clearing members, which address the risks that such clearing members may pose to the derivatives clearing organization, on a periodic basis, take appropriate action to address concerns identified in such reviews, and document such reviews and the basis for determining what action was appropriate to take.

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(i) *Cross-margining.* (1) A derivatives clearing organization that seeks to implement a cross-margining program with one or more clearing organizations shall file rules for Commission approval pursuant to § 40.5 of this chapter that contain, at a minimum, the following information:

(i) Identification of the products that would be eligible for cross-margining, including product specifications or criteria that would be used to define eligible products;

(ii) Analysis of the risk characteristics of the eligible products;

(iii) Analysis of the liquidity of the respective markets for the eligible products, including the ability of clearing members and the derivatives clearing organization to offset or mitigate the risk of such products in a timely manner and proposed means for addressing insufficient liquidity;

(iv) Analysis of the availability of reliable prices for each of the eligible products;

(v) Financial and operational requirements that would apply to clearing members participating in the program;

(vi) A description and analysis of the margin methodology that would be used to calculate initial margin requirements, including:

(A) Any margin reduction applied to correlated positions; and

(B) Information regarding the correlations between eligible products, including the stability of the relationship among the eligible products and the potential impact a change in the correlations could have on setting initial margin requirements;

(vii) Procedures the derivatives clearing organization would follow in the event of a clearing member default, including any loss-sharing arrangements;

(viii) A description of the arrangements for obtaining daily position data with respect to products in the account;

(ix) Whether funds to support the cross-margined positions will be

maintained together in one account or in separate accounts at each participating clearing organization; and

(x) A copy of the agreement between the clearing organizations participating in the cross-margining program.

(2) The Commission may request additional information in support of a rule submission filed under this paragraph (i), and may approve such rules in accordance with § 40.5 of this chapter.

■ 15. Revise § 39.15 to read as follows:

§ 39.15 Treatment of funds.

(a) *Required standards and procedures.* A derivatives clearing organization shall establish standards and procedures that are designed to protect and ensure the safety of funds and assets belonging to clearing members and their customers.

(b) *Customer funds*—(1) *Segregation.* A derivatives clearing organization shall comply with the applicable segregation requirements of section 4d of the Act and Commission regulations in this part, or any other applicable Commission regulation in this chapter or order requiring that customer funds and assets, including money, securities, and property, be segregated, set aside, or held in a separate account.

(2) *Commingling*—(i) *Cleared swaps account.* In order for a derivatives clearing organization and its clearing members to commingle customer positions in futures, options, foreign futures, foreign options, and swaps, or any combination thereof, and any money, securities, or property received to margin, guarantee or secure such positions, in an account subject to the requirements of section 4d(f) of the Act, the derivatives clearing organization shall file rules for Commission approval pursuant to § 40.5 of this chapter. Such rule submission shall include, at a minimum, the following:

(A) Identification of the products that would be commingled, including product specifications or the criteria that would be used to define eligible products;

(B) Analysis of the risk characteristics of the eligible products;

(C) Identification of whether the swaps would be executed bilaterally and/or executed on a designated contract market and/or a swap execution facility;

(D) Analysis of the liquidity of the respective markets for the eligible products, the ability of clearing members and the derivatives clearing organization to offset or mitigate the risk of such eligible products in a timely manner, without compromising the financial integrity of the account, and, as appropriate, proposed means for addressing insufficient liquidity;

(E) Analysis of availability of reliable prices for each of the eligible products;

(F) A description of the financial, operational, and managerial standards or requirements for clearing members that would be permitted to commingle eligible products;

(G) A description of the systems and procedures that would be used by the derivatives clearing organization to oversee such clearing members' risk management of any such commingled positions;

(H) A description of the financial resources of the derivatives clearing organization, including the composition and availability of a guaranty fund with respect to the eligible products that would be commingled;

(I) A description and analysis of the margin methodology that would be applied to the commingled eligible products, including any margin reduction applied to correlated positions, and any applicable margin rules with respect to both clearing members and customers;

(J) An analysis of the ability of the derivatives clearing organization to manage a potential default with respect to any of the eligible products that would be commingled;

(K) A discussion of the procedures that the derivatives clearing organization would follow if a clearing member defaulted, and the procedures that a clearing member would follow if a customer defaulted, with respect to any of the commingled eligible products in the account; and

(L) A description of the arrangements for obtaining daily position data with respect to eligible products in the account.

(ii) *Futures account.* In order for a derivatives clearing organization and its clearing members to commingle customer positions in futures, options, foreign futures, foreign options, and swaps, or any combination thereof, and any money, securities, or property received to margin, guarantee or secure such positions, in an account subject to the requirements of section 4d(a) of the Act, the derivatives clearing organization shall file rules for Commission approval pursuant to § 40.5 of this chapter. Such rule submission shall include, at a minimum, the information required under paragraph (b)(2)(i) of this section.

(iii) *Commission action.* The Commission may request additional information in support of a rule submission filed under paragraph (b)(2)(i) or (ii) of this section, and may approve such rules in accordance with § 40.5 of this chapter.

(c) *Holding of funds and assets.* A derivatives clearing organization shall hold funds and assets belonging to clearing members and their customers in a manner which minimizes the risk of loss or of delay in the access by the derivatives clearing organization to such funds and assets.

(d) *Transfer of customer positions.* A derivatives clearing organization shall have rules providing that the derivatives clearing organization will promptly transfer all or a portion of a customer's portfolio of positions, and related funds as necessary, from the carrying clearing member of the derivatives clearing organization to another clearing member of the derivatives clearing organization, without requiring the close-out and re-booking of the positions prior to the requested transfer, subject to the following conditions:

(1) The customer has instructed the carrying clearing member to make the transfer;

(2) The customer is not currently in default to the carrying clearing member;

(3) The transferred positions will have appropriate margin at the receiving clearing member;

(4) Any remaining positions will have appropriate margin at the carrying clearing member; and

(5) The receiving clearing member has consented to the transfer.

(e) *Permitted investments.* Funds and assets belonging to clearing members and their customers that are invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks. Any investment of customer funds or assets, including cleared swaps customer collateral, as defined in § 22.1 of this chapter, by a derivatives clearing organization shall comply with § 1.25 of this chapter.

■ 16. Revise § 39.16 to read as follows:

§ 39.16 Default rules and procedures.

(a) *General.* A derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events during which clearing members become insolvent or default on the obligations of such clearing members to the derivatives clearing organization.

(b) *Default management plan.* A derivatives clearing organization shall maintain a current written default management plan that delineates the roles and responsibilities of its board of directors, its risk management committee, any other committee that a derivatives clearing organization may have that has responsibilities for default

management, and the derivatives clearing organization's management, in addressing a default, including any necessary coordination with, or notification of, other entities and regulators. Such plan shall address any differences in procedures with respect to highly liquid products and less liquid products. A derivatives clearing organization shall conduct and document a test of its default management plan at least on an annual basis. The derivatives clearing organization shall include clearing members in a test of its default management plan at least on an annual basis.

(c) *Default procedures.* (1) A derivatives clearing organization shall have procedures that would permit the derivatives clearing organization to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a default on the obligations of a clearing member to the derivatives clearing organization. The derivatives clearing organization shall have a default committee that would be convened in the event of a default involving substantial or complex positions to help identify market issues with any action the derivatives clearing organization is considering. The default committee shall include clearing members and may include other participants to help the derivatives clearing organization efficiently manage the house or customer positions of the defaulting clearing member.

(2) A derivatives clearing organization shall have rules that set forth its default procedures, including:

(i) The derivatives clearing organization's definition of a default;

(ii) The actions that the derivatives clearing organization may take upon a default, which shall include immediate public notice of a declaration of default on its website and the prompt transfer, liquidation, or hedging of the customer or house positions of the defaulting clearing member, as applicable, and which may include, in the discretion of the derivatives clearing organization, the auctioning or allocation of such positions to other clearing members;

(iii) Any obligations that the derivatives clearing organization imposes on its clearing members to participate in auctions, or to accept allocations, of the customer or house positions of the defaulting clearing member, *provided that:*

(A) The derivatives clearing organization shall permit a clearing member to outsource to a qualified third party, authority to act in the clearing member's place in any auction, subject to appropriate safeguards imposed by the derivatives clearing organization;

(B) The derivatives clearing organization shall permit a clearing member to outsource to a qualified third party, authority to act in the clearing member's place in any allocations, subject to appropriate safeguards imposed by the derivatives clearing organization; and

(C) The derivatives clearing organization shall not require a clearing member to bid for a portion of, or accept an allocation of, the defaulting clearing member's positions that is not proportional to the size of the bidding or accepting clearing member's positions in the same product class at the derivatives clearing organization, as measured by the clearing initial margin requirement for those positions;

(iv) The sequence in which the funds and assets of the defaulting clearing member and its customers and the financial resources maintained by the derivatives clearing organization would be applied in the event of a default;

(v) A provision that the funds and assets of a defaulting clearing member's customers shall not be applied to cover losses with respect to a house default; and

(vi) A provision that the excess house funds and assets of a defaulting clearing member shall be applied to cover losses with respect to a customer default, if the relevant customer funds and assets are insufficient to cover the shortfall.

(3) A derivatives clearing organization shall make its default rules publicly available as provided in § 39.21.

(d) *Insolvency of a clearing member.* (1) A derivatives clearing organization shall have rules that require a clearing member to provide prompt notice to the derivatives clearing organization if it becomes the subject of a bankruptcy petition, receivership proceeding, or the equivalent;

(2) No later than upon receipt of such notice, a derivatives clearing organization shall review the continuing eligibility of the clearing member for clearing membership; and

(3) No later than upon receipt of such notice, a derivatives clearing organization shall take any appropriate action, in its discretion, with respect to such clearing member or its house or customer positions, including but not limited to liquidation or transfer of positions, suspension, or revocation of clearing membership.

■ 17. Revise § 39.17 to read as follows:

§ 39.17 Rule enforcement.

(a) *General.* A derivatives clearing organization shall:

(1) Maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance (by itself and its clearing members) with the rules of the derivatives clearing organization and the resolution of disputes;

(2) Have the authority and ability to discipline, limit, suspend, or terminate the activities of a clearing member due to a violation by the clearing member of any rule of the derivatives clearing organization; and

(3) Report to the Commission regarding rule enforcement activities and sanctions imposed against clearing members as provided in paragraph (a)(2) of this section, in accordance with § 39.19(c)(4)(xvii).

(b) *Authority to enforce rules.* The board of directors of the derivatives clearing organization may delegate responsibility for compliance with the requirements of paragraph (a) of this section to an appropriate committee, unless the responsibilities are otherwise required to be carried out by the chief compliance officer pursuant to the Act or this part.

■ 18. Revise § 39.19 to read as follows:

§ 39.19 Reporting.

(a) *General.* A derivatives clearing organization shall provide to the Commission the information specified in this section and any other information that the Commission determines to be necessary to conduct oversight of the derivatives clearing organization.

(b) *Submission of reports*—(1) *General requirement.* A derivatives clearing organization shall submit the information required by this section to the Commission in a format and manner specified by the Commission.

(2) *Certification.* When making a submission pursuant to this section, an employee of the derivatives clearing organization must certify that he or she is duly authorized to make such a submission on behalf of the derivatives clearing organization.

(3) *Time zones.* Unless otherwise specified by the Commission or its designee, any stated time in this section is Central time for information concerning derivatives clearing organizations located in that time zone, and Eastern time for information concerning all other derivatives clearing organizations.

(c) *Reporting requirements.* Each registered derivatives clearing organization shall provide to the Commission or other person as may be required or permitted by this paragraph (c) the information specified as follows:

(1) *Daily reporting.* (i) A derivatives clearing organization shall compile as of the end of each trading day, and submit to the Commission by 10:00 a.m. on the next business day, a report containing the following information related to all positions other than fully-collateralized positions:

(A) Initial margin requirements and initial margin on deposit for each clearing member, by house origin and by each customer origin, and by each individual customer account;

(B) Daily variation margin, separately listing the mark-to-market amount collected from or paid to each clearing member, by house origin and by each customer origin, and by each individual customer account;

(C) All other daily cash flows relating to clearing and settlement including, but not limited to, option premiums and payments related to swaps such as coupon amounts, collected from or paid to each clearing member, by house origin and by each customer origin, and by each individual customer account; and

(D) End-of-day positions, including as appropriate the risk sensitivities and valuation data for such positions, for each clearing member, by house origin and by each customer origin, and by each individual customer account. The derivatives clearing organization shall identify each individual customer account using both a legal entity identifier and any internally-generated identifier, where applicable, within each customer origin for each clearing member.

(ii) The report shall contain the information required by paragraphs (c)(1)(i)(A) through (D) of this section for:

(A) All futures positions, and options positions, as applicable;

(B) All swaps positions; and

(C) All securities positions that are:

(*1*) Held in a customer account subject to section 4d of the Act; or

(*2*) Subject to a cross-margining agreement.

(2) *Quarterly reporting.* A derivatives clearing organization shall provide to the Commission each fiscal quarter, or at any time upon Commission request, a report of the derivatives clearing organization's financial resources as required by § 39.11(f)(1).

(3) *Annual reporting.* A derivatives clearing organization shall provide to the Commission each year:

(i) The annual report of the chief compliance officer required by § 39.10; and

(ii) Audited year-end financial statements of the derivatives clearing organization as required by § 39.11(f)(2).

(iii) [Reserved]

(iv) The reports required by this paragraph (c)(3) shall be filed not later than 90 days after the end of the derivatives clearing organization's fiscal year, or at such later time as the Commission may permit, in its discretion, upon request by the derivatives clearing organization.

(4) *Event specific reporting*—(i) *Decrease in financial resources.* If there is a decrease of 25 percent or more in the total value of the financial resources available to satisfy the requirements under § 39.11(a)(1) or § 39.33(a), as applicable, either from the last quarterly report submitted under § 39.11(f) or from the value as of the close of the previous business day, a derivatives clearing organization shall report such decrease to the Commission no later than one business day following the day the 25 percent threshold was reached. The report shall include:

(A) The total value of the financial resources as of the close of business the day the 25 percent threshold was reached;

(B) If reporting a decrease in value from the previous business day, the total value of the financial resources immediately prior to the 25 percent decline;

(C) A breakdown of the value of each financial resource reported in each of paragraphs (c)(4)(i)(A) and (B) of this section, calculated in accordance with the requirements of § 39.11(d) or § 39.33(b), as applicable, including the value of each individual clearing member's guaranty fund deposit if the derivatives clearing organization reports guaranty fund deposits as a financial resource; and

(D) A detailed explanation for the decrease.

(ii) *Decrease in liquidity resources.* If there is a decrease of 25 percent or more in the total value of the liquidity resources available to satisfy the requirements under § 39.11(e) or § 39.33(c), as applicable, either from the last quarterly report submitted under § 39.11(f) or from the value as of the close of the previous business day, a derivatives clearing organization shall report such decrease to the Commission no later than one business day following the day the 25 percent threshold was reached. The report shall include:

(A) The total value of the liquidity resources as of the close of business the day the 25 percent threshold was reached;

(B) If reporting a decrease in value from the previous business day, the total value of the liquidity resources immediately prior to the 25 percent decline;

(C) A breakdown of the value of each liquidity resource reported in each of paragraphs (c)(4)(ii)(A) and (B) of this section, calculated in accordance with the requirements of § 39.11(e) or § 39.33(c), as applicable, including the value of each individual clearing member's guaranty fund deposit if the derivatives clearing organization reports guaranty fund deposits as a liquidity resource; and

(D) A detailed explanation for the decrease.

(iii) *Decrease in ownership equity.* A derivatives clearing organization shall report to the Commission no later than two business days prior to an event which the derivatives clearing organization knows or reasonably should know will cause a decrease of 20 percent or more in ownership equity from the last reported ownership equity balance as reported on a quarterly or audited financial statement required to be submitted by paragraph (c)(2) or (c)(3)(ii), respectively, of this section; but in any event no later than two business days after such decrease in ownership equity for events that caused the decrease about which the derivatives clearing organization did not know and reasonably could not have known prior to the event. The report shall include:

(A) Pro forma financial statements reflecting the derivatives clearing organization's estimated future financial condition following the anticipated decrease for reports submitted prior to the anticipated decrease and current financial statements for reports submitted after such a decrease; and

(B) A detailed explanation for the decrease or anticipated decrease in the balance.

(iv) *Six-month liquid asset requirement.* A derivatives clearing organization shall notify the Commission immediately when the derivatives clearing organization knows or reasonably should know of a deficit in the six-month liquid asset requirement of § 39.11(e)(2).

(v) *Change in current assets.* A derivatives clearing organization shall notify the Commission no later than two business days after the derivatives clearing organization's current liabilities exceed its current assets. The notice shall include a balance sheet that reflects the derivatives clearing organization's current assets and current liabilities and an explanation as to the reason for the negative balance.

(vi) *Request to clearing member to reduce its positions.* A derivatives clearing organization shall notify the Commission immediately of a request by the derivatives clearing organization

to one of its clearing members to reduce the clearing member's positions. The notice shall include:

(A) The name of the clearing member;

(B) The time the clearing member was contacted;

(C) The number of positions for futures and options, and for swaps, the number of outstanding trades and notional amount, by which the derivatives clearing organization requested the reduction;

(D) All products that are the subject of the request; and

(E) The reason for the request.

(vii) *Determination to transfer or liquidate positions.* A derivatives clearing organization shall notify the Commission immediately of a determination by the derivatives clearing organization that a position it carries for one of its clearing members must be liquidated immediately or transferred immediately, or that the trading of any account of a clearing member shall be only for the purpose of liquidation because that clearing member has failed to meet an initial or variation margin call or has failed to fulfill any other financial obligation to the derivatives clearing organization. The notice shall include:

(A) The name of the clearing member;

(B) The time the clearing member was contacted;

(C) The products that are subject to the determination;

(D) The number of positions for futures and options, and for swaps, the number of outstanding trades and notional amount, that are subject to the determination; and

(E) The reason for the determination.

(viii) *Default of a clearing member.* A derivatives clearing organization shall notify the Commission immediately of the default of a clearing member. An event of default shall be determined in accordance with the rules of the derivatives clearing organization. The notice of default shall include:

(A) The name of the clearing member;

(B) The products the clearing member defaulted upon;

(C) The number of positions for futures and options, and for swaps, the number of outstanding trades and notional amount, the clearing member defaulted upon; and

(D) The amount of the financial obligation.

(ix) *Change in ownership or corporate or organizational structure*—(A) *Reporting requirement.* A derivatives clearing organization shall report to the Commission any anticipated change in the ownership or corporate or organizational structure of the derivatives clearing organization or its parent(s) that would:

(*1*) Result in at least a 10 percent change of ownership of the derivatives clearing organization;

(*2*) Create a new subsidiary or eliminate a current subsidiary of the derivatives clearing organization; or

(*3*) Result in the transfer of all or substantially all of the assets of the derivatives clearing organization to another legal entity.

(B) *Required information.* The report shall include: A chart outlining the new ownership or corporate or organizational structure; a brief description of the purpose and impact of the change; and any relevant agreements effecting the change and corporate documents such as articles of incorporation and bylaws.

(C) *Time of report.* The report shall be submitted to the Commission no later than three months prior to the anticipated change, provided that the derivatives clearing organization may report the anticipated change to the Commission later than three months prior to the anticipated change if the derivatives clearing organization does not know and reasonably could not have known of the anticipated change three months prior to the anticipated change. In such event, the derivatives clearing organization shall immediately report such change to the Commission as soon as it knows of such change.

(D) *Confirmation of change report.* The derivatives clearing organization shall report to the Commission the consummation of the change no later than two business days following the effective date of the change.

(x) *Change in key personnel.* A derivatives clearing organization shall report to the Commission no later than two business days following the departure or addition of persons who are key personnel as defined in § 39.2. The report shall include, as applicable, the name and contact information of the person who will assume the duties of the position permanently or the person who will assume the duties on a temporary basis until a permanent replacement fills the position.

(xi) *Change in legal name.* A derivatives clearing organization shall report to the Commission no later than two business days following a legal name change of the derivatives clearing organization.

(xii) *Change in credit facility funding arrangement.* A derivatives clearing organization shall report to the Commission no later than one business day after the derivatives clearing organization changes a credit facility funding arrangement it has in place, or is notified that such arrangement has changed, including but not limited to a change in lender, change in the size of the facility, change in expiration date, or any other material changes or conditions.

(xiii) *Change in liquidity funding arrangement.* A derivatives clearing organization shall report to the Commission no later than one business day after the derivatives clearing organization changes a liquidity funding arrangement it has in place, or is notified that such arrangement has changed, including but not limited to a change in provider, change in the size of the facility, change in expiration date, or any other material changes or conditions.

(xiv) *Change in settlement bank arrangements.* A derivatives clearing organization shall report to the Commission no later than one business day after any change in the derivatives clearing organization's arrangements with any settlement bank used by the derivatives clearing organization or approved for use by the derivatives clearing organization's clearing members.

(xv) *Settlement bank issues.* A derivatives clearing organization shall report to the Commission no later than one business day after any material issues or concerns arise regarding the performance, stability, liquidity, or financial resources of any settlement bank used by the derivatives clearing organization or approved for use by the derivatives clearing organization's clearing members.

(xvi) *Change in depositories for customer funds.* A derivatives clearing organization shall report to the Commission no later than one business day after any change in the derivatives clearing organization's arrangements with any depository of customer funds.

(xvii) *Sanctions against a clearing member.* A derivatives clearing organization shall provide notice to the Commission no later than two business days after the derivatives clearing organization imposes sanctions against a clearing member.

(xviii) *Financial condition and events.* A derivatives clearing organization shall provide to the Commission immediate notice after the derivatives clearing organization knows or reasonably should have known of:

(A) The institution of any legal proceedings which may have a material adverse financial impact on the derivatives clearing organization;

(B) Any event, circumstance or situation that materially impedes the derivatives clearing organization's ability to comply with this part and is not otherwise required to be reported under this section; or

(C) A material adverse change in the financial condition of any clearing member that is not otherwise required to be reported under this section.

(xix) *Financial statements material inadequacies.* A derivatives clearing organization shall provide notice to the Commission within 24 hours if the derivatives clearing organization discovers or is notified by an independent public accountant of the existence of any material inadequacy in a financial statement, and within 48 hours after giving such notice provide a written report stating what steps have been and are being taken to correct the material inadequacy.

(xx) *Change in fiscal year.* A derivatives clearing organization shall provide to the Commission immediate notice of any change to the start and end dates of its fiscal year.

(xxi) *Change in independent accounting firm.* A derivatives clearing organization shall report to the Commission no later than one business day after any change in the derivatives clearing organization's independent public accounting firm. The report shall include the date of such change, the name and contact information of the new firm, and the reason for the change.

(xxii) *Major decision of the board of directors.* A derivatives clearing organization shall report to the Commission any major decision of the derivatives clearing organization's board of directors as required by § 39.24(a)(3)(i).

(xxiii) *System safeguards.* A derivatives clearing organization shall report to the Commission:

(A) Exceptional events as required by § 39.18(g); or

(B) Planned changes as required by § 39.18(h).

(xxiv) *Margin model issues.* A derivatives clearing organization shall report to the Commission no later than one business day after any issue occurs with a DCO's margin model, including margin models for cross-margined portfolios, that affects the DCO's ability to calculate or collect initial margin or variation margin.

(xxv) *Recovery and wind-down plans.* A derivatives clearing organization that is required to maintain recovery and wind-down plans pursuant to § 39.39(b) shall submit its plans to the Commission no later than the date on which the derivatives clearing organization is required to have the plans. A derivatives clearing organization that is not required to maintain recovery and wind-down plans pursuant to § 39.39(b), but which nonetheless maintains such plans, may choose to submit its plans to the Commission. A derivatives clearing organization that has submitted its recovery and wind-down plans to the Commission shall, upon making any revisions to the plans, submit the revised plans to the Commission along with a description of the changes and the reason for those changes.

(xxvi) *New product accepted for clearing.* A derivatives clearing organization shall provide notice to the Commission no later than 30 calendar days prior to accepting a new product for clearing. The notice shall include:

(A) A brief description of the new product;

(B) The date on which the derivatives clearing organization intends to begin accepting the new product for clearing;

(C) A statement as to whether the new product will require the derivatives clearing organization to submit any rule changes pursuant to § 40.5 or § 40.6, and § 40.10, as applicable, of this chapter;

(D) A statement as to whether the derivatives clearing organization has informed, or intends to inform, its clearing members and/or the general public of the new product and, if written notice was given, a web address for or copy of such notice; and

(E) An explanation of any substantive opposing views received and how the derivatives clearing organization addressed such views or objections.

(5) *Requested reporting.* A derivatives clearing organization shall provide upon request by the Commission and within the time specified in the request:

(i) Any information related to its business as a clearing organization, including information relating to trade and clearing details.

(ii) A written demonstration, containing supporting data, information and documents, that the derivatives clearing organization is in compliance with one or more core principles and relevant provisions of this part.

■ 19. In § 39.20, revise paragraphs (a) introductory text and (b) to read as follows:

§ 39.20 Recordkeeping.

(a) *Requirement to maintain information.* A derivatives clearing organization shall maintain records of all activities related to its business as a derivatives clearing organization. Such records shall include, but are not limited to, records of:

* * * * *

(b) *Form and manner of maintaining information*—(1) *General.* The records required to be maintained by this chapter shall be maintained in accordance with the provisions of § 1.31 of this chapter, for a period of not less than 5 years, except as provided in paragraph (b)(2) of this section.

(2) *Exception for swap data.* A derivatives clearing organization that clears swaps must maintain swap data in accordance with the requirements of part 45 of this chapter.

■ 20. Revise § 39.21 to read as follows:

§ 39.21 Public information.

(a) *General.* A derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization. In furtherance of the objective in this paragraph (a), a derivatives clearing organization shall have clear and comprehensive rules and procedures.

(b) *Availability of information.* A derivatives clearing organization shall make information concerning the rules and the operating and default procedures governing the clearing and settlement systems of the derivatives clearing organization available to market participants.

(c) *Public disclosure.* A derivatives clearing organization shall make the following information readily available to the general public, in a timely manner, by posting such information on the derivatives clearing organization's website, unless otherwise permitted by the Commission:

(1) The terms and conditions of each contract, agreement, and transaction cleared and settled by the derivatives clearing organization;

(2) Each clearing and other fee that the derivatives clearing organization charges its clearing members;

(3) Information concerning its margin-setting methodology;

(4) The size and composition of the financial resource package available in the event of a clearing member default, updated as of the end of the most recent fiscal quarter or upon Commission request and posted concurrently with submission of the report to the Commission under § 39.11(f)(1)(i)(A);

(5) Daily settlement prices, volume, and open interest for each contract, agreement, or transaction cleared or settled by the derivatives clearing organization, posted no later than the business day following the day to which the information pertains;

(6) The derivatives clearing organization's rulebook, including rules and procedures for defaults in accordance with § 39.16;

(7) A current list of all clearing members;

(8) A list of all swaps that the derivatives clearing organization will

accept for clearing that identifies which swaps on the list are required to be cleared, in accordance with § 50.3(a) of this chapter; and

(9) Any other information that is relevant to participation in the clearing and settlement activities of the derivatives clearing organization.

■ 21. Revise § 39.22 to read as follows:

§ 39.22 Information sharing.

A derivatives clearing organization shall enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement, and shall use relevant information obtained from each such agreement in carrying out the risk management program of the derivatives clearing organization.

■ 22. Add § 39.24 to read as follows:

§ 39.24 Governance.

(a) *General.* (1) A derivatives clearing organization shall have governance arrangements that:

(i) Are written;

(ii) Are clear and transparent;

(iii) Place a high priority on the safety and efficiency of the derivatives clearing organization; and

(iv) Explicitly support the stability of the broader financial system and other relevant public interest considerations of clearing members, customers of clearing members, and other relevant stakeholders.

(2) The board of directors shall make certain that the derivatives clearing organization's design, rules, overall strategy, and major decisions appropriately reflect the legitimate interests of clearing members, customers of clearing members, and other relevant stakeholders.

(3) To the extent consistent with other statutory and regulatory requirements on confidentiality and disclosure:

(i) Major decisions of the board of directors shall be clearly disclosed to clearing members, other relevant stakeholders, and to the Commission; and

(ii) Major decisions of the board of directors having a broad market impact shall be clearly disclosed to the public.

(b) *Governance arrangement requirements.* A derivatives clearing organization shall have governance arrangements that:

(1) Are clear and documented;

(2) To an extent consistent with other statutory and regulatory requirements on confidentiality and disclosure, are disclosed, as appropriate, to the Commission, other relevant authorities, clearing members, customers of clearing members, owners of the derivatives clearing organization, and to the public;

(3) Describe the structure pursuant to which the board of directors, committees, and management operate;

(4) Include clear and direct lines of responsibility and accountability;

(5) Clearly specify the roles and responsibilities of the board of directors and its committees, including the establishment of a clear and documented risk management framework;

(6) Clearly specify the roles and responsibilities of management;

(7) Describe procedures pursuant to which the board of directors oversees the chief risk officer, risk management committee, and material risk decisions;

(8) Provide risk management and internal control personnel with sufficient independence, authority, resources, and access to the board of directors so that the operations of the derivatives clearing organization are consistent with the risk management framework established by the board of directors;

(9) Assign responsibility and accountability for risk decisions, including in crises and emergencies; and

(10) Assign responsibility for implementing the:

(i) Default rules and procedures required by §§ 39.16 and 39.35, as applicable;

(ii) System safeguard rules and procedures required by §§ 39.18 and 39.34, as applicable; and

(iii) Recovery and wind-down plans required by § 39.39, as applicable.

(c) *Fitness standards.* (1) A derivatives clearing organization shall establish and enforce appropriate fitness standards for:

(i) Directors;

(ii) Members of any disciplinary committee;

(iii) Members of the derivatives clearing organization;

(iv) Any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and

(v) Any other party affiliated with any individual or entity described in this paragraph.

(2) A derivatives clearing organization shall maintain policies to make certain that:

(i) The board of directors consists of suitable individuals having appropriate skills and incentives;

(ii) The performance of the board of directors and the performance of individual directors is reviewed on a regular basis; and

(iii) Managers have the appropriate experience, skills, and integrity necessary to discharge operational and risk management responsibilities.

■ 23. Add § 39.25 to read as follows:

§ 39.25 Conflicts of interest.

A derivatives clearing organization shall:

(a) Establish and enforce rules to minimize conflicts of interest in the decision-making process of the derivatives clearing organization;

(b) Establish a process for resolving such conflicts of interest; and

(c) Describe procedures for identifying, addressing, and managing conflicts of interest involving members of the board of directors.

■ 24. Add § 39.26 to read as follows:

§ 39.26 Composition of governing boards.

A derivatives clearing organization shall ensure that the composition of the governing board or board-level committee of the derivatives clearing organization includes market participants and individuals who are not executives, officers, or employees of the derivatives clearing organization or an affiliate thereof. For purposes of this section, ''market participant'' means any clearing member of the derivatives clearing organization or customer of a clearing member, or an employee, officer, or director of such an entity.

■ 25. In § 39.27, revise paragraph (c) to read as follows:

§ 39.27 Legal risk considerations.

* * * * *

(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.

(3) The derivatives clearing organization shall ensure on an ongoing basis that the memorandum required in paragraph (b) of Exhibit R to appendix A to this part is accurate and up to date and shall submit an updated memorandum to the Commission promptly following all material changes to the analysis or content contained in the memorandum.

§ 39.32 [Removed and Reserved]

■ 26. Remove and reserve § 39.32.

■ 27. In § 39.33, revise paragraphs (a)(1) and (c)(1)(i), and add paragraph (d)(5) to read as follows:

§ 39.33 Financial resources requirements for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

(a) * * *

(1) Notwithstanding the requirements of § 39.11(a)(1), each systemically important derivatives clearing organization and subpart C derivatives clearing organization that, in either case, is systemically important in multiple jurisdictions or is involved in activities with a more complex risk profile shall maintain financial resources sufficient to enable it to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined financial exposure to the derivatives clearing organization in extreme but plausible market conditions.

* * * * *

(c) * * *

(1) * * *

(i) Notwithstanding the provisions of § 39.11(e)(1)(ii), each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall maintain eligible liquidity resources, in all relevant currencies, that, at a minimum, will enable it to meet its intraday, same-day, and multiday obligations to perform settlements, as defined in § 39.14(a)(1), with a high degree of confidence under a wide range of stress scenarios that should include, but not be limited to, a default by the clearing member creating the largest aggregate liquidity obligation for the systemically important derivatives clearing organization or subpart C derivatives clearing organization in extreme but plausible market conditions.

* * * * *

(d) * * *

(5) A systemically important derivatives clearing organization with access to accounts and services at a Federal Reserve Bank, pursuant to section 806(a) of the Dodd-Frank Act, 12 U.S.C. 5465(a), shall use such accounts and services where practical.

* * * * *

■ 28. In § 39.36, revise paragraphs (a)(5)(ii), (a)(6), (b)(2)(ii), (d) and (e) to read as follows:

§ 39.36 Risk management for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

(a) * * *

(5) * * *

(ii) Using the results to assess the adequacy of, and to adjust, its total amount of financial resources; and

(6) Use the results of stress tests to support compliance with the minimum financial resources requirement set forth in § 39.11(a)(1) or § 39.33(a), as applicable.

(b) * * *

(2) * * *

(ii) Testing of the ability of the models or model components to react appropriately using actual or hypothetical datasets and assessing the impact of different model parameter settings.

* * * * *

(d) *Margin model assessment.* Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall conduct, on at least an annual basis (or more frequently if there are material relevant market developments), an assessment of the theoretical and empirical properties of its margin model for all products it clears.

(e) *Independent validation.* Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall perform, on an annual basis, a full validation of its financial risk management model and its liquidity risk management model.

* * * * *

■ 29. In § 39.37, revise paragraphs (b) and (c) to read as follows:

§ 39.37 Additional disclosure for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

* * * * *

(b)(1) Review and update its responses disclosed as required by paragraph (a) of this section at least every two years and following material changes to the systemically important derivatives clearing organization's or subpart C derivatives clearing organization's system or the environment in which it operates. A material change to the systemically important derivatives clearing organization's or subpart C derivatives clearing organization's system or the environment in which it operates is a change that would significantly change the accuracy and usefulness of the existing responses; and

(2) Provide notice to the Commission of updates to its responses required by paragraph (b)(1) of this section following material changes no later than ten business days after the updates are made. Such notice shall be accompanied by a copy of the text of the responses that shows all deletions and additions made to the immediately preceding version of the responses;

(c) Disclose, publicly and to the Commission, relevant basic data on transaction volume and values consistent with the standards set forth in the Public Quantitative Disclosure Standards for Central Counterparties published by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions;

* * * * *

■ 30. In § 39.39, revise paragraph (a)(2) to read as follows:

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

(a) * * *

(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 of one or more services.

* * * * *

■ 31. Revise appendix A to part 39 to read as follows:

Appendix A to Part 39—Form DCO Derivatives Clearing Organization Application for Registration

BILLING CODE 6351–01–P

OMB No. 3038-0076

COMMODITY FUTURES TRADING COMMISSION

FORM DCO

DERIVATIVES CLEARING ORGANIZATION
APPLICATION FOR REGISTRATION

GENERAL INSTRUCTIONS

Intentional misstatements or omissions of fact may constitute federal criminal violations (7 U.S.C. 13 and 18 U.S.C. 1001) or grounds for disqualification from registration.

DEFINITIONS

Unless the context requires otherwise, all terms used in this Form DCO have the same meaning as in the Commodity Exchange Act ("Act"), and in the General Rules and Regulations of the Commodity Futures Trading Commission ("Commission") thereunder. All references to Commission regulations are found at 17 CFR Ch. I.

For the purposes of this Form DCO, the term "Applicant" shall include any applicant for registration as a derivatives clearing organization.

GENERAL INSTRUCTIONS

1. This Form DCO, which includes a Cover Sheet and required Exhibits (together, "Form DCO" or "application"), is to be filed with the Commission by all applicants for registration as a derivatives clearing organization, including applicants when amending a pending application, pursuant to Section 5b of the Act and the Commission's regulations thereunder. Upon the filing of an application for registration or an amendment to an application in accordance with the instructions provided herein, the Commission will publish notice of the filing and afford interested persons an opportunity to submit written data, views and comments concerning such application. No application for registration will be effective unless the Commission, by order, grants such registration.
2. Individuals' names, except the executing signature, shall be given in full (Last Name, First Name, Middle Name).
3. With respect to the executing signature, it must be manually signed by a duly authorized representative of the Applicant as follows: If the Form DCO is filed by a corporation, it must be signed in the name of the corporation by a principal officer duly authorized; if filed by a limited liability company, it must be signed in the name of the limited liability company by a manager or member duly authorized to sign on the limited liability company's behalf; if filed by a partnership, it must be signed in the name of the partnership by a general partner duly authorized; if filed by an unincorporated organization or association which is not a partnership, it must be signed in the name of such organization or association by the managing agent, *i.e.*, a duly authorized person who directs or manages or who participates in the directing or managing of its affairs.
4. If this Form DCO is being filed as an application for registration, all applicable items must be answered in full. If any item or Exhibit is inapplicable, this response must be affirmatively indicated by the designation "none," "not applicable," or "N/A," as appropriate.
5. Under section 5b of the Act and the Commission's regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this Form DCO from any Applicant seeking registration as a derivatives clearing organization and from any registered derivatives clearing organization. Disclosure by the Applicant of the information specified in this Form DCO is mandatory prior to the start of the processing of an application for registration as a derivatives clearing

organization. The information provided in this Form DCO will be used for the principal purpose of determining whether the Commission should grant or deny registration to an Applicant.

The Commission may determine that additional information is required from the Applicant in order to process its application. An Applicant is therefore encouraged to supplement this Form DCO with any additional information that may be significant to its operation as a derivatives clearing organization and to the Commission's review of its application. A Form DCO which is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Form DCO, however, shall not constitute a finding that the Form DCO has been filed as required or that the information submitted is true, current or complete.

6. As provided in 17 CFR 39.3(a)(5), except in cases where the Applicant submits a request for confidential treatment with the Secretary of the Commission pursuant to the Freedom of Information Act and 17 CFR 145.9, information supplied in this application will be included routinely in the public files of the Commission and will be available for inspection by any interested person.

APPLICATION AMENDMENTS

1. 17 CFR 39.3(a)(4) requires an Applicant to promptly amend its application if it discovers a material omission or error in the application, or if there is a material change in the information contained in the application, including any supplement or amendment thereto.
2. Applicants, when filing this Form DCO for purposes of amending a pending application, must re-file an entire Cover Sheet, amended if necessary and including an executing signature, and attach thereto revised Exhibits or other materials marked to show changes, as applicable. The submission of an amendment to a pending application represents that the remaining items and Exhibits that are not amended remain true, current, and complete as previously filed.

WHERE TO FILE

This Form DCO must be filed with the Commission in the format and manner specified by the Commission.

COMMODITY FUTURES TRADING COMMISSION

FORM DCO
DERIVATIVES CLEARING ORGANIZATION
APPLICATION FOR REGISTRATION

COVER SHEET

_____
Exact name of Applicant as specified in charter

_____
Address of principal executive offices

☐ If this is an **APPLICATION** for registration, complete in full and check here.

☐ If this is an **AMENDMENT** to a pending application, list below all items that are being amended and check here.

_____
_____
_____
_____

GENERAL INFORMATION

1. Name under which business is or will be conducted, if different than name specified above (include acronyms, if any):

_____

2. If name of derivatives clearing organization is being amended, state previous derivatives clearing organization name:

_____

3. Additional contact information:

_____
Website URL Main Phone Number

4. List of principal office(s) and address(es) where derivatives clearing organization activities are/will be conducted:

Office	Address
_____	_____
_____	_____

_____ _____

_____ _____

BUSINESS ORGANIZATION

5. If Applicant is a successor to a previously registered derivatives clearing organization, please complete the following:

   a. Date of succession _____

   b. Full name and address of predecessor registrant

   _____
   Name

   _____
   Street Address

   _____
   City State Country Zip Code

6. Applicant is a:

☐ Corporation

☐ Partnership (specify whether general or limited)

☐ Limited Liability Company

☐ Other form of organization (specify) _____

7. Date of formation: _____

8. Jurisdiction of organization: _____

   List all other jurisdictions in which Applicant is qualified to do business (including non-US jurisdictions):

_____

_____

   List all other regulatory licenses or registrations of Applicant (or exemptions from any licensing requirement) including with non-US regulators:

_____

_____

9. FEIN or other Tax ID#: _____

10. Fiscal Year End: _____

ADDITIONAL CONTACT INFORMATION

11. Provide contact information specifying name, title, phone numbers, mailing address and e-mail address for the following individuals:

a. The primary contact for questions and correspondence regarding the application

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

b. The individual responsible for handling questions regarding the Applicant's financial statements

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

c. The individual responsible for serving as the Chief Risk Officer of the Applicant pursuant to § 39.13 of the Commission's regulations

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

d. The individual responsible for serving as the Chief Compliance Officer of the Applicant pursuant to § 39.10 of the Commission's regulations

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

e. The individual responsible for serving as the chief legal officer of the Applicant

Name and Title

Office Phone Number Mobile Phone Number

Mailing address E-mail Address

12. Outside Service Providers: Provide contact information specifying name, title, phone numbers, mailing address and e-mail address for any outside service provider retained by the Applicant as follows:

a. Certified Public Accountant

Name and Title

Office Phone Number Mobile Phone Number

Mailing address E-mail Address

b. Legal Counsel

Name and Title

Office Phone Number Mobile Phone Number

Mailing address E-mail Address

c. Records Storage or Management

Name and Title

Office Phone Number Mobile Phone Number

Mailing address E-mail Address

d. Business Continuity/Disaster Recovery

Name and Title

Office Phone Number Mobile Phone Number

Mailing address E-mail Address

e. Professional consultants providing services related to this application

e. Professional consultants providing services related to this application

_____
Name and Title

_____
Office Phone Number Mobile Phone Number

_____
Mailing address E-mail Address

13. Applicant agrees and consents that the notice of any proceeding before the Commission in connection with this application may be given by sending such notice by certified mail to the person named below at the address given.

_____
Print Name and Title

_____
Street Address

_____
City State Country Zip Code

SIGNATURE/REPRESENTATION

14. Applicant has duly caused this application to be signed on its behalf by its duly authorized representative as of the _____ day of _____, 20_____. Applicant and the undersigned each represent hereby that, to the best of their knowledge, all information contained herein is true, current and complete in all material respects. It is understood that all required items and Exhibits are considered integral parts of this Form DCO and that the submission of any amendment represents that all unamended items and Exhibits remain true, current, and complete as previously filed.

_____
Name of Applicant

By:_____
Manual Signature of Duly Authorized Person

_____
Print Name and Title of Signatory

COMMODITY FUTURES TRADING COMMISSION

FORM DCO

DERIVATIVES CLEARING ORGANIZATION
APPLICATION FOR REGISTRATION

EXHIBIT INSTRUCTIONS

1. The following Exhibits must be filed with the Commission by each Applicant seeking registration as a derivatives clearing organization pursuant to section 5b of the Act and the Commission's regulations thereunder.

2. The application must include a Table of Contents listing each Exhibit required by this Form DCO and indicating which, if any, Exhibits are inapplicable. For any Exhibit that is inapplicable, next to the Exhibit letter specify "none," "not applicable," or "N/A," as appropriate.

3. The Exhibits must be labeled as specified in this Form DCO. If any Exhibit requires information that is related to, or may be duplicative of, information required to be included in another Exhibit, Applicant may summarize such information and provide a cross-reference to the Exhibit that contains the required information.

4. If the information required in an Exhibit involves computerized programs or systems, Applicant must submit descriptions of system test procedures, tests conducted, or test results in sufficient detail to demonstrate the Applicant's ability to comply with the core principles specified in section 5b of the Act and the Commission's regulations thereunder (the "Core Principles"). With respect to each system test, Applicant must identify the methodology used and provide the computer software, programs, and data necessary to enable the Commission to duplicate each system test as it relates to the applicable Core Principle.

5. If Applicant seeks confidential treatment of any Exhibit or a portion of any Exhibit, Applicant must mark such Exhibit with a prominent stamp, typed legend, or other suitable form of notice on each page or portion of each page stating "Confidential Treatment Requested by [Applicant]." If such marking is impractical under the circumstances, a cover sheet prominently marked "Confidential Treatment Requested by [Applicant]" should be provided for each group of records submitted for which confidential treatment is requested. Each of the records transmitted in this matter shall be individually marked with an identifying number and code so that they are separately identifiable. Applicant must also file a confidentiality request with the Secretary of the Commission in accordance with 17 CFR 145.9.

DESCRIPTION OF EXHIBITS

EXHIBIT A — GENERAL INFORMATION/COMPLIANCE

- Attach as **Exhibit A-1**, a regulatory compliance chart setting forth each Core Principle and providing citations to the Applicant's relevant rules, policies, and procedures that address each Core Principle, and a brief summary of the manner in which Applicant will comply with each Core Principle.

- Attach as **Exhibit A-2**, a copy of Applicant's rulebook. The rulebook must consist of all the rules necessary to carry out Applicant's role as a derivatives clearing organization. Applicant must certify that its rules constitute a binding agreement between Applicant and its clearing members and, in addition to any separate clearing member agreements, establish rights and obligations between Applicant and its clearing members.

- Attach as **Exhibit A-3**, a narrative summary of Applicant's proposed clearing activities including (i) the anticipated start date of clearing products (or, if Applicant is already clearing products, the anticipated start date of activities for which Applicant is seeking an amendment to its registration), and (ii) a description of the scope of Applicant's proposed clearing activities (*e.g.*, clearing for a designated contract market; clearing for a swap execution facility; clearing bilaterally executed products).

- Attach as **Exhibit A-4**, a detailed business plan setting forth, at a minimum, the nature of and rationale for Applicant's activities as a derivatives clearing organization, the context in which it is beginning or expanding its activities, and the nature, terms, and conditions of the products it will clear.

- Attach as **Exhibit A-5**, a list of the names of any person (i) who owns 5% or more of Applicant's stock or other ownership or equity interests; or (ii) who, either directly or indirectly, through agreement or otherwise, may control or direct the management or policies of Applicant. Provide as part of **Exhibit A-5** the full name and address of each such person, indicate the person's ownership percentage, and attach a copy of the agreement or, if there is no agreement, an explanation of the basis upon which such person exercises or may exercise such control or direction.

- Attach as **Exhibit A-6**, a list of Applicant's current officers, directors, governors, general partners, LLC managers, and members of all standing committees, as applicable, or persons performing functions similar to any of the foregoing, indicating for each:

    a. Name and Title (with respect to a director, such title must include participation on any committee of Applicant);

    b. Dates of commencement and, if appropriate, termination of present term of office or position;

    c. Length of time each such person has held the same office or position;

    d. Brief description of the business experience of each person over the last ten years;

    e. Any other current business affiliations in the financial services industry;

    f. If such person is not an employee of Applicant, list any compensation paid to the person as a result of his or her position at Applicant. For a director, describe any performance-based compensation;

    g. A certification for each such person that the individual would not be disqualified under section 8a(2) of the Act or § 1.63; and

    h. With respect to a director, indicate whether such director is an independent director, and whether such director is a market participant, and the basis for such a determination as to the director's status.

If another entity will operate or control the day-to-day business operations of the Applicant, attach for such entity all of the items indicated in **Exhibit A-6**.

- Attach as **Exhibit A-7**, a diagram of the entire corporate organizational structure of Applicant including the legal name of all entities within the organizational structure and the applicable percentage ownership among affiliated entities. Additionally, provide (i) a list of all jurisdictions in which Applicant or its affiliated entities are doing business; (ii) the registration status of Applicant and its affiliated entities, including pending applications or exemption requests and whether any applications or exemptions have been denied (*e.g.*, country, regulator, registration category, date of registration or request for exemption, date of denial, if applicable); and (iii) the address for legal service of process for Applicant (which cannot be a post office box) for each applicable jurisdiction.

- Attach as **Exhibit A-8**, a copy of the constituent documents, articles of incorporation or association with all amendments thereto, partnership or limited liability agreements, and existing bylaws, operating agreement, or instruments corresponding thereto, of Applicant. Provide a certificate of good standing or its equivalent for Applicant for each jurisdiction in which Applicant is doing business, including any foreign jurisdiction, dated within one month of the date of the Form DCO.

- Attach as **Exhibit A-9**, a brief description of any material pending legal proceeding(s) or governmental investigation(s) to which Applicant or any of its affiliates is a party or is subject, or to which any of its or their property is at issue. Include the name of the court or agency where the proceeding(s) is pending, the date(s) instituted, the principal parties involved, a description of the factual allegations in the complaint(s), the laws that were allegedly violated, and the relief sought. Include similar information as to any such proceeding(s) or any investigation known to be contemplated by any governmental agency.

- If Applicant intends to use the services of an outside service provider (including services of its clearing members or market participants), to enable Applicant to comply with any of the Core Principles, Applicant must submit as **Exhibit A-10** all agreements entered into or to be entered into between Applicant and the outside service provider, and identify (1) the services that will be provided; (2) the staff of the outside service provider who will provide the services (specifying (i) in which department or unit of the outside service provider they are employed, (ii) title, and (iii) if known, level of expertise); and (3) the Core Principles addressed by such arrangement. Each submitted agreement must include all attachments cited therein. If a submitted agreement is not final and executed, the Applicant must submit evidence that constitutes reasonable assurance that such services will be provided as soon as operations require.

- Attach as Exhibit **A-11**, documentation that demonstrates compliance with the Chief Compliance Officer ("CCO") requirements set forth in § 39.10(c), including but not limited to:

    a. Evidence of the designation of an individual to serve as Applicant's CCO with full responsibility and authority to develop and enforce appropriate compliance policies and procedures;

    b. A description of the background and skills of the person designated as the CCO and a certification that the individual would not be disqualified under section 8a(2) or 8a(3) of the Act;

    c. Identification of to whom the CCO reports (*i.e.*, the senior officer of the derivatives clearing organization, the senior officer responsible for the derivative clearing organization's clearing activities, or the Board of Directors of the derivatives clearing organization);

    d. Any plan of communication or regular or special meetings between the CCO and the Board of Directors or senior officer as appropriate;

    e. A job description setting forth the CCO's duties;

    f. Procedures for the remediation of noncompliance issues; and

g. A copy of Applicant's written compliance policies and procedures (including a code of ethics and conflict of interest policy).

- Attach as Exhibit **A-12**, a description of Applicant's enterprise risk management program, and how it complies with the requirements set forth in § 39.10(d).

EXHIBIT B — FINANCIAL RESOURCES

- Attach as **Exhibit B**, documents that demonstrate compliance with the financial resources requirements set forth in § 39.11 of the Commission's regulations, including but not limited to:

a. General – Provide as **Exhibit B-1**:

(1) The most recent year-end audited financial statements of Applicant calculated in accordance with U.S. generally accepted accounting principles ("U.S. GAAP"), including the balance sheet, income statement, statement of cash flows, notes to the financial statements, and an independent auditor's report issued by a certified public accountant, dated as of the end of Applicant's last fiscal year-end prior to the date of filing the Form DCO. If Applicant does not have its own year-end audited financial statements, it may submit the audited financial statements of its direct parent company, dated as of the end of the direct parent company's last fiscal year-end prior to the date of filing the Form DCO. Applicant should be aware that once it is registered as a derivatives clearing organization it must submit its own year-end audited financial statements, as required by § 39.11(f)(2)(i), and the cost of such audit must be included in Applicant's calculation of its total projected operating costs in Exhibit B-3, as described in paragraph c(5) below;

(2) If Applicant is unable to submit a copy of its own audited financial statements or the audited financial statements of its direct parent company, as required by paragraph a(1) above, Applicant must provide its year-end financial statements calculated in accordance with U.S. GAAP, including the balance sheet, income statement, statement of cash flows, and notes to the financial statements, dated as of the end of Applicant's last fiscal year-end prior to the date of filing the Form DCO. These year-end financial statements must be accompanied by an independent accountant's review report issued by a certified public accountant;

(3) If the audited or reviewed financial statements submitted in accordance with either paragraph a(1) or paragraph a(2) above are not dated as of the end of Applicant's last fiscal quarter prior to the date of filing the Form DCO, Applicant must also provide a set of Applicant's quarterly unaudited financial statements, dated as of the end of Applicant's last fiscal quarter prior to the date of filing the Form DCO;

(4) If Applicant is incorporated or organized under the laws of any foreign country, it may submit the financial statements described above prepared in accordance with either U.S.GAAP or the International Financial Reporting Standards ("IFRS") issued by the International Accounting Standards Board. Applicant should be aware that once it is registered as a derivatives clearing organization it must submit financial statements prepared in accordance with U.S. GAAP or IFRS, as required by § 39.11(f)(1) and (f)(2);

(5) If Applicant is a start-up or will commence operations after it is registered as a derivatives clearing organization, Applicant must submit a set of pro-forma financial statements, including the balance sheet, income statement, and statement of cash flows, dated as of the first month-end after Applicant's

expected start date. The set of pro-forma statements must include a narrative description of how the estimates were determined;

(6) A narrative description of how Applicant will fund its financial resources obligations on the first day of its operation as a registered derivatives clearing organization; and

(7) Applicant must complete the form that is used by registered derivatives clearing organizations for quarterly reports under § 39.11(f)(1), as of the date of the most recent financial statements provided in Exhibit B-1. If Applicant is a start-up, Applicant must complete the form using estimated figures and must provide a narrative description of how the estimates were determined. The Division of Clearing and Risk will provide the current form to Applicant, upon request.

b. Default Resources – Provide as **Exhibit B-2**:

(1) A calculation of the financial resources needed to enable Applicant to meet its requirements under § 39.11(a)(1), as of the date of the most recent financial statements provided in Exhibit B-1. Applicant must provide hypothetical default scenarios designed to reflect a variety of market conditions, and the assumptions and variables underlying the scenarios must be explained. All results of the analysis must be included. This calculation requires a start-up enterprise to estimate its largest anticipated financial exposure and explain the basis for such estimate;

(2) Evidence of unencumbered assets sufficient to satisfy § 39.11(a)(1), as of the date of the most recent financial statements provided in Exhibit B-1. For example, this may be demonstrated by audited financial statements or a copy of a bank balance statement(s), custodian statement(s), or statement(s) from any other institution holding such assets for each type of financial resource. A start-up enterprise may not make this demonstration through audited financial statements. If relying on § 39.11(b)(1)(v), such other resources must be thoroughly explained. If Applicant intends to use a committed line of credit or similar facility to meet the liquidity requirement pursuant to § 39.11(e)(1)(iii), Applicant must provide a copy of the applicable credit agreement(s). If relying on § 39.11(b)(1)(i) and/or (v), Applicant cannot also count these assets when demonstrating its compliance with its operating resources requirement under § 39.11(a)(2) and Applicant must detail the amounts or percentages of such assets that apply to each financial resource requirement;

(3) A demonstration that Applicant can perform the monthly calculations required by § 39.11(c)(1);

(4) A demonstration that Applicant's financial resources are sufficiently liquid as required by § 39.11(e)(1), as of the date of the most recent financial statements provided in Exhibit B-1;

(5) A demonstration of how Applicant will be able to maintain, at all times, the level of resources required by § 39.11(a)(1); and

(6) A demonstration of how default resources financial information will be updated and reported to clearing members and the public under § 39.21, and to the Commission as required by § 39.11(f)(1) and § 39.19.

c. Operating Resources – Provide as **Exhibit B-3**:

(1) A calculation of the financial resources needed to enable Applicant to meet its requirements under § 39.11(a)(2), as of the date of the most recent financial statements provided in Exhibit B-1;

(2) Evidence of assets sufficient to satisfy the amount required under § 39.11(a)(2), as of the date of the most recent financial statements provided in Exhibit B-1. For example, this may be demonstrated by audited financial statements or a copy of a bank balance statement(s), custodian statement(s), or statement(s) from any other institution holding such assets, in the name of Applicant, for each type of financial resource. A start-up enterprise may not make this demonstration through audited financial statements. If relying on § 39.11(b)(2)(ii), such other resources must be thoroughly explained. If Applicant intends to use a committed line of credit or similar facility to meet the liquidity requirement pursuant to § 39.11(e)(2), Applicant must provide a copy of the applicable credit agreement(s). If relying on § 39.11(b)(2)(i) or (ii), Applicant cannot also count these assets when demonstrating its compliance with meeting its default resources requirement under § 39.11(a)(1) and Applicant must detail the amounts or percentages of such assets that apply to each financial resource requirement;

(3) A narrative statement demonstrating the adequacy of Applicant's physical infrastructure to carry out business operations, which includes a principal executive office (separate from any personal dwelling) with a street address (not merely a post office box number). For its principal executive office and other facilities Applicant plans to occupy in carrying out its functions as a derivatives clearing organization, a description of the space (*e.g.*, location and square footage), use of the space (*e.g.*, executive office, data center), and the basis for Applicant's right to occupy the space (*e.g.*, lease, agreement with parent company to share leased space);

(4) A narrative statement demonstrating the adequacy of the technological systems necessary to carry out Applicant's business operations, including a description of Applicant's information technology and telecommunications systems and a timetable for full operability;

(5) A calculation pursuant to § 39.11(c)(2), including the total projected operating costs for Applicant's first year of operation as a derivatives clearing organization, calculated on a monthly basis with an explanation of the basis for calculating each cost and a discussion of the type, nature, and number of the various costs included;

(6) A demonstration that Applicant's financial resources are sufficiently liquid and unencumbered, as required by § 39.11(c)(2), as of the date of the most recent financial statements provided in Exhibit B-1;

(7) A demonstration of how Applicant will maintain, at all times, the level of resources required by § 39.11(a)(2) with an explanation of asset valuation methodology and calculation of projected revenue, if applicable; and

(8) A demonstration of how financial information for operating resources will be updated and reported to clearing members and the public under § 39.21, and to the Commission as required by § 39.11(f)(1) and § 39.19.

d. Human Resources – Provide as **Exhibit B-4**:

(1) An organizational chart showing Applicant's current and planned staff by position and title, including key personnel (as such term is defined in § 39.2) and, if applicable, managerial staff reporting to key personnel.

(2) A discussion and description of the staffing requirements needed to fulfill all operations and associated functions, tasks, services, and areas of supervision necessary to operate Applicant on a day-to-day basis; and

(3) The names and qualifications of individuals who are key personnel or other managerial staff who will carry out the operations and associated functions, tasks, services, and supervision needed to run the Applicant on day-to-day basis. In particular, Applicant must identify such individuals who are responsible for risk management, treasury, clearing operations and compliance (and specify whether each such person is an employee or consultant/agent).

EXHIBIT C — PARTICIPANT AND PRODUCT ELIGIBILITY

- Attach as **Exhibit C**, documents that demonstrate compliance with the participant and product eligibility requirements set forth in § 39.12 of the Commission's regulations, including but not limited to:

a. Participant Eligibility – Provide as **Exhibit C-1**, an explanation of the requirements for becoming a clearing member and how those requirements satisfy § 39.12 and, where applicable, support Applicant's compliance with other Core Principles. Applicant must address how its participant eligibility requirements comply with the core principles and regulations thereunder for financial resources, risk management, and operational capacity. The explanation also must include:

(1) A final version of the membership agreement between Applicant and its clearing members that sets forth the full scope of respective rights and obligations;

(2) A discussion of how Applicant will monitor for and enforce compliance with its eligibility criteria, especially minimum financial requirements;

(3) An explanation of how the eligibility criteria are objective and allow for fair and open access to Applicant. Applicant must include an explanation of the differences between various classes of membership or participation that might be based on different levels of capital and/or creditworthiness. Applicant must also include information about whether any differences exist in how Applicant will monitor and enforce the obligations of its various clearing members including any differences in access, privilege, margin levels, position limits, or other controls;

(4) If Applicant allows intermediation, Applicant must describe the requirements applicable to those who may act as intermediaries on behalf of customers or other market participants;

(5) A description of the program for monitoring the financial status of the clearing members on an ongoing basis;

(6) The procedures that Applicant will follow in the event of the bankruptcy or insolvency of a clearing member, which did not result in a default to Applicant;

(7) A description of whether and how Applicant would adjust clearing member participation under continuing eligibility criteria based on the financial, risk, or operational status of a clearing member;

(8) A discussion of whether Applicant's clearing members will be required to be registered with the Commission; and

(9) A list of current or prospective clearing members. If a current or prospective clearing member is a Commission registrant, Applicant must identify the member's designated self-regulatory organization.

b. Product Eligibility – Provide as **Exhibit C-2**, an explanation of the criteria used to determine the eligibility of products submitted for clearing, including:

(1) The regulatory status of each market on which a contract to be cleared by Applicant is traded (*e.g.*, designated contract market, swap execution facility, not a registered market), and whether the market for which Applicant clears intends to join the Joint Audit Committee. For bilaterally executed agreements, contracts, or transactions not traded on a registered market, Applicant must describe the nature of the related market and its interest in having the particular bilaterally executed agreement, contract, or transaction cleared;

(2) The criteria, and the factors considered in establishing the criteria, for determining the types of products that will be cleared;

(3) An explanation of how the criteria for deciding what products to clear take into account the different risks inherent in clearing different agreements, contracts, or transactions and how those criteria affect maintenance of assets to support the guarantee function in varying risk environments;

(4) A precise list of all the agreements, contracts, or transactions to be covered by Applicant's registration order, including the terms and conditions of all agreements, contracts, or transactions;

(5) A forecast of expected volume and open interest at the outset of clearing operations as a derivatives clearing organization, after six months, and after one year of operation as a derivatives clearing organization; and

(6) The mechanics of clearing each contract, such as reliance on exchange for physical, exchange for swap, or other substitution activity; whether the contracts are matched prior to submission for clearing or after submission; and other aspects of clearing mechanics that are relevant to understanding the products that would be eligible for clearing.

EXHIBIT D — RISK MANAGEMENT

- Attach as **Exhibit D**, documents that demonstrate compliance with the risk management requirements set forth in § 39.13 of the Commission's regulations, including but not limited to:

a. Risk Management Framework – Provide as **Exhibit D-1**, a copy of Applicant's written policies, procedures, and controls, as approved by Applicant's Board of Directors, that establish Applicant's risk management framework as required by § 39.13(b). Applicant must also provide a description of the composition and responsibilities of Applicant's Risk Management Committee.

b. Measuring Risk – Provide as **Exhibit D-2**, a narrative explanation of how Applicant has projected and will continue to measure its counterparty risk exposure, including:

(1) A description of the risk-based margin calculation methodology;

(2) The assumptions upon which the methodology was designed, including the risk analysis tools and procedures employed in the design process;

(3) An explanation as to whether other margining methodologies were considered and, if so, why they were not chosen;

(4) A demonstration of the margin methodology as applied to real or hypothetical clearing scenarios;

(5) A description of the data sources for inputs used in the methodology, *e.g.*, historical price data reflecting market volatility over various periods of time;

(6) A description of the sources of price data for the measurement of current exposures and the valuation models for addressing circumstances where pricing data is not readily available or reliable;

(7) The frequency and circumstances under which the margin methodology will be reviewed and the criteria for deciding how often to review and whether to modify a margin methodology;

(8) An independent validation of Applicant's systems for generating initial margin requirements, including its theoretical models;

(9) The frequency of measuring counterparty risk exposures (mark to market), whether counterparty risk exposures are routinely measured on an intraday basis, whether Applicant has the operational capacity to measure counterparty risk exposures on an intraday basis, and the circumstances under which Applicant would conduct a non-routine intraday measurement of counterparty risk exposures;

(10) Preliminary forecasts regarding future counterparty risk exposure and assumptions upon which such forecasts of exposure are based;

(11) A description of any systems or software that Applicant will require clearing members to use in order to margin their positions in their internal bookkeeping systems, and whether and under what terms and conditions Applicant will provide such systems or software to clearing members; and

(12) A description of the extent to which counterparty risk can be offset through the clearing process (*i.e.*, the limitations, if any, on Applicant's duty to fulfill its obligations as the buyer to every seller and the seller to every buyer).

c. Limiting Risk – Provide as **Exhibit D-3**, a narrative discussion addressing the specifics of Applicant's clearing activities, including:

(1) How Applicant will collect financial information about its clearing members and other traders or market participants, monitor price movements, and mark to market, on a daily basis, the products and/or portfolios it clears;

(2) How Applicant will monitor accounts carried by clearing members, the accumulation of positions by clearing members and other market participants, and compliance with risk limits; and how it will use large trader information;

(3) How Applicant will determine variation margin levels and outstanding initial margin due;

(4) How Applicant will identify unusually large pays on a proactive basis before they occur;

(5) Whether and how Applicant will compare price moves and position information to historical patterns and to the financial information collected from its clearing members; and how it will identify unusually large pays on a daily basis;

(6) How Applicant will use various risk tools and procedures such as: (i) value-at-risk calculations; (ii) stress testing; (iii) back testing; and/or (iv) other risk management tools and procedures. If Applicant is currently clearing products for which it is seeking registration as a derivatives clearing organization, provide back testing results for actual portfolios containing each such product, which demonstrate margin coverage at least at the 99 percent confidence level over the previous 252 trading days;

(7) How Applicant will communicate with clearing members, settlement banks, other derivatives clearing organizations, designated contract markets, swap execution facilities, major swap participants, swap data repositories, and other entities in emergency situations or circumstances that might require immediate action by the Applicant;

(8) How Applicant will monitor risk outside of its business hours;

(9) How Applicant will review its clearing members' risk management practices;

(10) Whether Applicant will impose credit limits and/or employ other risk filters (such as automatic system denial of entry of trades under certain conditions);

(11) Plans for handling "extreme market volatility" and how Applicant defines that term;

(12) An explanation of how Applicant will be able to offset positions in order to manage risk including: (i) ensuring both Applicant and clearing members have the operational capacity to do so; and (ii) liquidity of the relevant market, especially with regard to bilaterally executed products;

(13) Plans for managing accounts that are "too big" to liquidate and for conducting "what if" analyses on these accounts;

(14) If options are involved, how Applicant will manage the different and more complex risk presented by these products;

(15) If Applicant intends to clear swaps, whether and how often Applicant will offer multilateral portfolio compression exercises for its clearing members; and

(16) If Applicant intends to clear credit default swaps, credit default futures, and any derivatives that reference either credit default swaps or credit default futures, how Applicant will manage the unique risks associated with clearing

these products, including but not limited to liquidity risk, currency risk, seasonable risk, compounding risk, jump-to-default risk or similar jump risk.

d. Existence of collateral (funds and assets) to apply to losses resulting from realized risk – Provide as **Exhibit D-4**:

(1) An explanation of the factors, process, and methodology used for calculating and setting required collateral levels, the required inputs, the appropriateness of those inputs, and an illustrative example;

(2) An analysis supporting the sufficiency of Applicant's collateral levels for capturing all or most price moves that may take place in one settlement cycle;

(3) A description of how Applicant will value open positions and collateral assets;

(4) A description and explanation of the forms of assets allowed as collateral, why they are acceptable, and whether there are any haircuts or concentration limits or charges on certain kinds of assets, including how often any such haircuts and concentration limits or charges are reviewed;

(5) An explanation of how and when Applicant will collect collateral, whether and under what circumstances it will collect collateral on an intraday basis, and what will happen if collateral is not received in a timely manner. Include a proposed collateral collection schedule based on changes in market positions and collateral values; and

(6) If options are involved, a full explanation of how Applicant will manage the associated risk through the use of collateral including, if applicable, a discussion of Applicant's option pricing model, how it establishes its implied volatility scan range, and other matters related to the complex matter of managing the risk associated with the clearing of option contracts.

EXHIBIT E — SETTLEMENT PROCEDURES

- Attach as **Exhibit E**, documents that demonstrate compliance with the settlement procedures requirements set forth in § 39.14 of the Commission's regulations, including but not limited to:

a. Settlement – Provide as **Exhibit E-1**, a full description of the daily process of settling financial obligations on all open positions being cleared. This must include:

(1) Procedures for completing settlements on a timely basis during normal market conditions (and no less frequently than once each business day);

(2) Procedures for completing settlements on a timely basis in varying market circumstances including in the event of a default by the clearing member creating the largest financial exposure for Applicant in extreme but plausible market conditions;

(3) A description of how contracts will be marked to market on at least a daily basis;

(4) Identification of the settlement banks used by Applicant (including identification of the lead settlement bank, if applicable) and a copy of Applicant's settlement bank agreement(s). Such settlement bank agreements must (i) outline daily cash settlement procedures, (ii) state clearly when settlement fund transfers will occur, (iii) provide procedures for settlements on

bank holidays when the markets are open, and (iv) ensure that settlements are final when effected;

(5) Identification of settlement banks that Applicant will allow its clearing members to use for margin calls and variation settlements;

(6) A description of the criteria and review process used by Applicant when selecting settlement banks to be used by the Applicant or its clearing members, including criteria addressing the capitalization, creditworthiness, access to liquidity, operational reliability, and regulation or supervision of such settlement banks;

(7) Procedures for monitoring the continued appropriateness of each approved settlement bank, including a description of how Applicant monitors the full range and concentration of its exposures to each settlement bank;

(8) The specific means by which settlement instructions are communicated from Applicant to the settlement bank(s);

(9) A timetable showing the flow of funds associated with the settlement of financial obligations with respect to all cleared products for a 24-hour period or such other settlement timeframe specified with respect to a particular product; this may be presented in the form of a chart, as in the following example:

FORM DCO - SAMPLE SETTLEMENT CYCLE CHART

[Specify U.S. Dollar or other currency as applicable]

TRADE DATE = T [INSERT TIME ZONE] [INSERT EXACT TIMES BELOW]	EXAMPLE OF SETTLEMENT ACTIVITY FOR WHICH TIMES SHOULD BE PROVIDED
T: _____ pm	Last market closes (end of regular trading hours).
T: Approx. ____ pm	DCO/DCM/SEF establishes daily settlement price for each product based on information generated by its [INSERT NAME OF APPLICABLE CLEARING SYSTEM].
T: By _____ pm	Clearing members' position information for intraday settlement is obtained from DCO's clearing system.
T+1: Approx. ____ am	DCO provides daily initial margin (IM) and settlement variation/option premium (SVOP) amounts to clearing members and banks.
T+1: By ____ am	Banks commit to pay daily IM and SVOP amounts.
T+1: Approx. ____ am	Banks pay daily IM and SVOP amounts from clearing members to DCO.
T+1: Approx. __ am	Banks pay daily IM and SVOP amounts from DCO to clearing members.
T: Approx. ____ pm	DCO/DCM/SEF determines prices for intraday settlement.
T: Approx. ____ pm	Clearing members' position information for intraday settlement is obtained from DCO's clearing system.
T: By approx. ____ pm	DCO provides intraday IM and SVOP amounts to banks and clearing members.
T: By ____ pm	Banks commit to pay intraday IM and SVOP amounts.
T: Approx. ____ pm	Banks pay intraday IM and SVOP amounts from clearing members to DCO.

T: Approx. ____ pm	Banks pay intraday IM and SVOP amounts from DCO to clearing members.

(10) A description of what happens in the event that there are insufficient funds in a clearing member's settlement account;

(11) An explanation of how and when Applicant will collect variation margin, whether and under what circumstances it will collect variation margin on an intraday basis, what will happen if variation margin is not received in a timely manner, and a proposed variation margin collection schedule based on changes in market prices;

(12) All the information above, to the extent relevant, for any products cleared that may be denominated in a foreign currency; and

(13) With respect to physical settlements, identify Applicant's rules that clearly state each obligation of Applicant with respect to physical deliveries, and explain how Applicant intends to identify and manage risks arising from physical settlement.

b. Recordkeeping – Provide as **Exhibit E-2**, a full description of the following:

(1) The nature and quality of the information collected concerning the flow of funds involved in clearing and settlement; and

(2) How such information will be recorded, maintained, and accessed.

c. Relationships with other clearing organizations – Provide as **Exhibit E-3**, a description of Applicant's relationships with other derivatives clearing organizations, clearing agencies, financial market utilities, or foreign entities that perform similar functions, including how compliance with the terms and conditions of agreements or arrangements with such other entities will be satisfied, *e.g.*, any netting or offset arrangements, cross-margining, portfolio margining, linkage, common banking, common clearing programs or limited guaranty agreements or arrangements.

EXHIBIT F — TREATMENT OF FUNDS

- Attach as **Exhibit F**, documents that demonstrate compliance with the treatment of funds requirements set forth in § 39.15 of the Commission's regulations, including but not limited to:

a. Safe custody – Provide as **Exhibit F-1**, documents that demonstrate:

(1) How Applicant will ensure the safekeeping of funds and assets belonging to clearing members and their customers in depositories and how Applicant will minimize the risk of loss or of delay in accessing such funds and assets;

(2) The depositories that will hold such funds and assets and any written agreements between or among such depositories, Applicant, or its clearing members regarding the legal status of the funds and assets and the specific conditions or prerequisites for movement of the funds and assets; and

(3) How Applicant will limit the concentration of risk in depositories where such funds and assets are deposited.

b. Segregation of customer and proprietary funds and assets – Provide as **Exhibit F-2**, documents that demonstrate:

(1) The appropriate segregation of customer funds and assets and associated acknowledgment documentation, including the acknowledgment letters required under §§ 1.20 and/or 22.5, as applicable, for each bank or trust company that Applicant will use for the deposit of customer funds and assets; and

(2) Requirements or restrictions regarding commingling customer funds and assets with proprietary funds and assets, obligating customer funds and assets for any purpose other than to purchase, clear, and settle the products Applicant is clearing, procedures regarding customer funds and assets which are subject to cross-margin or similar agreements, and any other aspects of the segregation of customer funds and assets.

c. Investment standards – Provide as **Exhibit F-3**, documents that demonstrate:

(1) Policies and procedures to ensure that funds and assets belonging to clearing members and their customers would only be invested in instruments with minimal credit, market, and liquidity risks, and that any investment of customer funds or assets would comply with the requirements of § 1.25; and

(2) How Applicant will obtain and keep associated records and data regarding the details of such investments.

EXHIBIT G — DEFAULT RULES AND PROCEDURES

- Attach as **Exhibit G**, documents that demonstrate compliance with the default rules and procedures requirements set forth in § 39.16 of the Commission's regulations, including but not limited to:

a. Default Management Plan – Applicant must provide a copy of its written default management plan which must contain all of the information required by § 39.16(b), along with Applicant's most recently documented results of a test of its default management plan.

b. Definition of default – Applicant must describe or otherwise document:

(1) The events (activities, lapses, or situations) that will constitute a clearing member default;

(2) What action Applicant can take upon a default and how Applicant will otherwise enforce the rules applicable in the event of default, including the steps and the sequence of the steps that will be followed. Identify whether a Default Management Committee exists and, if so, its role in the default process; and

(3) An example of a hypothetical default scenario and the results of the default management process used in the scenario.

c. Remedial action – Applicant must describe or otherwise document:

(1) The authority and methods by which Applicant may take appropriate action in the event of the default of a clearing member which may include, among other things, liquidating positions, hedging, auctioning, allocating (including any obligations of clearing members to participate in auctions or to accept allocations), and transferring of customer accounts to another clearing member (including an explanation of the movement of positions and collateral on deposit); and

(2) Actions taken by a clearing member or other events that would put a clearing member on Applicant's "watch list" or similar device.

d. Process to address shortfalls – Applicant must describe or otherwise document:

(1) Procedures for the prompt application of Applicant and/or clearing member financial resources to address monetary shortfalls resulting from a default;

(2) How Applicant will make publicly available its default rules including a description of the priority of application of financial resources in the event of default (*i.e.*, the "waterfall"); and

(3) How Applicant will take timely action to contain losses and liquidity pressures and to continue to meet each obligation of Applicant.

e. Use of cross-margin programs – Describe or otherwise document, as applicable, how cross-margining programs will provide for fair and efficient means of covering losses in the event of a default of any clearing member participating in the program.

f. Customer priority rule – Describe or otherwise document rules and procedures regarding priority of customer accounts over proprietary accounts of defaulting clearing members and, where applicable, specifically in the context of specialized margin reduction programs such as cross-margining or common banking arrangements with other derivatives clearing organizations, clearing agencies, financial market utilities, or foreign entities that perform similar functions.

EXHIBIT H — RULE ENFORCEMENT

- Attach as **Exhibit H**, documents that demonstrate compliance with the rule enforcement requirements set forth in § 39.17 of the Commission's regulations, including but not limited to:

a. Surveillance – Describe or otherwise document arrangements and resources for the effective monitoring of compliance with Applicant's rules.

b. Enforcement – Describe or otherwise document:

(1) Arrangements and resources for enforcing compliance with Applicant's rules and addressing instances of non-compliance, including disciplinary tools such as limiting, suspending, or terminating a clearing member's access or member privileges; and

(2) The standards and any procedural protections Applicant will follow in imposing any such enforcement measure.

c. Dispute resolution – Describe or otherwise document arrangements and resources for resolution of disputes between clearing members and Applicant.

EXHIBIT I — SYSTEM SAFEGUARDS

- Attach as **Exhibit I**, documents that demonstrate compliance with the system safeguards requirements set forth in § 39.18 of the Commission's regulations, including but not limited to:

a. A description of Applicant's program of risk analysis and oversight with respect to its operations and automated systems. This program must be designed to ensure daily processing, clearing, and settlement of transactions and address each of the following categories of risk:

(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. An explanation of how Applicant will establish and maintain resources that allow for the fulfillment of its program of risk analysis and oversight with respect to its operations and automated systems, and a description of such resources, including:

(1) A description of how Applicant will periodically verify that its resources are adequate to ensure daily processing, clearing, and, settlement;

(2) A demonstration that Applicant's automated systems are reliable, secure, and have (and will continue to have) adequate scalable capacity;

(3) A description of the physical, technological and personnel resources and procedures used by Applicant as part of its business continuity and disaster recovery plan, and support for the conclusion that these resources are sufficient to enable the Applicant to resume daily processing, clearing, and settlement no later than the next business day following a disruption; and

(4) A statement identifying which such resources are Applicant's own resources and which are provided by a service provider (outsourced). For resources that are outsourced, provide (i) all contracts governing the outsourcing arrangements, including all schedules and other supplemental materials, and (ii) a demonstration that Applicant employs personnel with the expertise necessary to enable them to supervise the service provider's delivery of the services.

c. An explanation of how Applicant will ensure the proper functioning of its systems, including its program for the periodic objective testing and review of its systems and back-up facilities (including all of its own and outsourced resources), and verification that all such resources will work effectively together;

d. Identification of the persons conducting the testing, including information as to their qualifications and independence;

e. A description of Applicant's emergency procedures, including a copy of its written plan for business continuity and disaster recovery and a description of how Applicant will coordinate its business continuity and disaster recovery plan (including testing) with its clearing members and providers of essential services such as telecommunications, power, and water; and

f. A description of how Applicant will report exceptional events and planned changes to the Commission as required by §§ 39.18(g) and 39.18(h).

EXHIBIT J — REPORTING

- Attach as **Exhibit J**, documents that demonstrate compliance with the reporting requirements set forth in § 39.19 of the Commission's regulations, including but not limited to:

a. A description of how Applicant will make available to Commission staff all the information Commission staff needs in order to carry out effective oversight, *e.g.*,

the internal staff procedures Applicant will follow to provide such information. If the laws or regulations of any foreign country in which Applicant is incorporated or organized require any approval(s) by a foreign regulatory authority with respect to the provision of any information to the Commission, Applicant must submit evidence that such approval(s) have been obtained.

b. A representation that the Applicant will submit the information required to satisfy the daily, quarterly, annual, event-specific, and requested reporting requirements specified in § 39.19(c) of the Commission's regulations, in the format and manner and within the time specified by the Commission.

EXHIBIT K — RECORDKEEPING

- Attach as **Exhibit K**, documents that demonstrate compliance with the recordkeeping requirements set forth in § 39.20 of the Commission's regulations, including but not limited to:

  a. Applicant's recordkeeping and record retention policies and procedures;

  b. The different activities related to the entity as a derivatives clearing organization for which it must maintain records;

  c. The manner in which records relating to swaps and swap data are gathered and maintained; and

  d. How Applicant will satisfy the performance standards of § 1.31 as applicable to derivatives clearing organizations, including:

    (1) What "full" or "complete" will encompass with respect to each type of book or record that will be maintained;

    (2) The form and manner in which books or records will be compiled and maintained with respect to each type of activity for which such books or records will be kept;

    (3) Confirmation that books and records will be open to inspection by any representative of the Commission or of the U.S. Department of Justice;

    (4) How long books and records will be readily available and how they will be made readily available during the first two years; and

  e. How long books and records will be maintained (and confirmation that, in any event, they will be maintained as required in § 1.31).

EXHIBIT L — PUBLIC INFORMATION

- Attach as **Exhibit L**, documents that demonstrate compliance with the public information requirements set forth in § 39.21 of the Commission's regulations, including but not limited to:

  a. Applicant's procedures for making its rulebook, a list of all current clearing members, and all other information listed in § 39.21(c) readily available to the general public, in a timely manner, by posting such information on Applicant's website;

  b. The URLs for Applicant's website for each item listed in § 39.21(c)(1) through (c)(9).

  c. Any other information routinely made available to the public by Applicant;

d. How Applicant will make information available to clearing members and market participants in order to allow such persons to become familiar with Applicant's procedures before participating in clearing operations; and

e. How clearing members will be informed of their specific rights and obligations preceding a default and upon a default, and of the specific rights, options, and obligations of Applicant preceding and upon a clearing member's default.

EXHIBIT M — INFORMATION SHARING

- Attach as **Exhibit M**, documents that demonstrate compliance with the information sharing requirements set forth in § 39.22 of the Commission's regulations, including but not limited to:

a. The appropriate and applicable information sharing agreements to which Applicant is, or intends to be, a party including any domestic or international information-sharing agreements or arrangements, whether formal or informal, which involve or relate to Applicant's operations, especially as it relates to measuring and addressing counterparty risk;

b. A description of the types of information expected to be shared and how that information will be shared;

c. An explanation as to how information obtained pursuant to any information-sharing agreements or arrangements would be used to further the objectives of Applicant's risk management program and any of its surveillance programs including financial surveillance and continuing eligibility of its clearing members; and

d. An explanation as to how Applicant expects to obtain accurate information pursuant to the information-sharing agreement or arrangement and the mechanisms or procedures which would allow for timely use and application of all information.

EXHIBIT N — ANTITRUST CONSIDERATIONS

- Attach as **Exhibit N**, documents that demonstrate compliance with the antitrust considerations requirements set forth in § 39.23 of the Commission's regulations, including but not limited to policies or procedures to ensure compliance with the antitrust considerations requirements.

EXHIBIT O — GOVERNANCE

- Attach as **Exhibit O**, documents that demonstrate compliance with the governance fitness standards requirements set forth in § 39.24 of the Commission's regulations, including but not limited to:

a. A copy of:

(1) The charter (or mission statement) of Applicant (if not attached as **Exhibit A-8**);

(2) The charter (or mission statement) of Applicant's Board of Directors, each committee composed entirely or in part of members of the Board of Directors (including any Executive Committee), as well as each other committee that has the authority to amend or constrain actions of Applicant's Board of Directors (if not attached as **Exhibit A-8**);

(3) If another entity "operates" the Applicant, the charter (or mission statement) of such entity's Board of Directors (if not attached as **Exhibit A-8**); and a description of the manner in which the Applicant will ensure that such entity's officers, directors, employees, and agents and such entity's books and records

shall be subject to the authority of the Commission pursuant to the Act and the Commission's regulations thereunder; and

(4) An internal organizational chart showing the lines of responsibility and accountability for each operational unit.

b. A description of how Applicant's governance arrangements place a high priority on Applicant's safety and efficiency and explicitly support the stability of the broader financial system and other relevant public interest considerations of clearing members, customers of clearing members, and other relevant stakeholders;

c. A description of how the Board of Directors makes certain that Applicant's design, rules, overall strategy, and major decisions appropriately reflect the legitimate interests of clearing members, customers of clearing members, and other relevant stakeholders;

d. A description of how major decisions of the Board of Directors are clearly disclosed to clearing members and other relevant stakeholders, and will be disclosed to the Commission, and how major decisions of the Board of Directors having a broad market impact are clearly disclosed to the public, to the extent consistent with other statutory and regulatory requirements on confidentiality and disclosure;

e. A description of how Applicant's governance arrangements are disclosed, as appropriate, to clearing members, customers of clearing members, Applicant's owners, and the public, and will be disclosed to the Commission, to the extent consistent with other statutory and regulatory requirements on confidentiality and disclosure;

f. A description of how Applicant's governance arrangements: (1) describe the structure pursuant to which the Board of Directors, committees, and management operate; (2) include clear and direct lines of responsibility and accountability; (3) clearly specify the roles and responsibilities of the Board of Directors and its committees, including the establishment of a clear and documented risk management framework; and (4) clearly specify the roles and responsibilities of management;

g. A description of the procedures pursuant to which Applicant's Board of Directors oversees Applicant's chief risk officer, risk management committee, and material risk decisions;

h. A description of how Applicant provides risk management, internal control, and internal audit personnel with sufficient independence, authority, resources, and access to the Board of Directors so that the operations of Applicant are consistent with its risk management framework;

i. A description of how Applicant's governance arrangements assign responsibility and accountability for risk decisions, including in crises and emergencies, and assign responsibility for implementing default rules and procedures, system safeguard rules and procedures, and as applicable, recovery and wind-down plans;

j. A description of the fitness standards applicable to members of the Board of Directors, members of any disciplinary committee, clearing members, any other individual or entity with direct access to settlement or clearing activities, and any party affiliated with any of the above individuals or entities, including a description or other documentation explaining how Applicant will collect and verify information that supports compliance with the fitness standards and how Applicant will enforce compliance with such standards; and

k. A description of how Applicant will make certain that: (1) its Board of Directors consists of suitable individuals having appropriate skills and incentives; (2) the performance of the Board of Directors and individual directors are reviewed on a regular basis; and (3) managers have the appropriate experience, skills, and integrity necessary to discharge operational and risk management responsibilities.

EXHIBIT P — CONFLICTS OF INTEREST

- Attach as **Exhibit P**, documents that demonstrate compliance with the conflicts of interest requirements set forth in § 39.25 of the Commission's regulations, including but not limited to:

a. A description of Applicant's rules to minimize conflicts of interest in its decision-making process and how it enforces those rules;

b. A description of Applicant's process for resolving such conflicts of interest or for making fair and non-biased decisions in the event of a conflict of interest; and

c. A description of Applicant's procedures for identifying, addressing, and managing conflicts of interest involving members of its Board of Directors.

EXHIBIT Q — COMPOSITION OF GOVERNING BOARDS

- Attach as **Exhibit Q**, documents that demonstrate compliance with the composition of governing boards requirements set forth in § 39.26, including but not limited to documentation describing the composition of Applicant's Board of Directors, including the number of market participants.

EXHIBIT R — LEGAL RISK CONSIDERATIONS

- Attach as **Exhibit R**, documents that demonstrate compliance with the legal risk considerations requirements set forth in § 39.27 of the Commission's regulations, including but not limited to:

a. A discussion of how Applicant operates pursuant to a well-founded, transparent, and enforceable legal framework that addresses each aspect of the activities of Applicant. The framework must provide for Applicant to act as a counterparty, including, as applicable:

(1) Novation;

(2) Netting arrangements;

(3) Applicant's interest in collateral (including margin);

(4) The steps that Applicant can 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 Applicant's accounts are debited and credited); and

(6) Other significant aspects of Applicant's operations, risk management procedures, and related requirements.

b. If Applicant provides, or will provide, clearing services outside the United States, Applicant must provide a memorandum from local counsel analyzing insolvency issues in the foreign jurisdiction where Applicant is based, which should describe or otherwise document:

(1) The manner in which Applicant's clearing rules and procedures pertaining to customer funds ("FCM Clearing Rules") segregate such funds, in accordance with section 4d of the Act and the Commission's regulations ("ring-fence");

(2) The basis for the conclusion that the arrangements to ring-fence customer funds set forth in the FCM Clearing Rules would be effective, under any relevant non-U.S. law or regulation, in the insolvency of a futures commission merchant ("FCM") clearing member or of the Applicant itself, including how such customer funds would not, therefore, form part of the general estate for distribution to the unsecured creditors of an insolvent FCM clearing member or of the Applicant;

(3) The basis for the conclusion that the laws of the jurisdiction in which Applicant is domiciled and the laws of any other relevant jurisdiction (*e.g.*, other jurisdictions in which customer funds may be held) support the enforceability of the FCM Clearing Rules;

(4) The basis for the conclusion that a local court or insolvency official in the jurisdiction in which Applicant is domiciled (and any other relevant jurisdiction) respect the choice of U.S. law in governing specific aspects of the FCM Clearing Rules to determine the extent of rights that Applicant has with respect to customer funds and be bound to follow the FCM Clearing Rules with respect to customer funds. The memorandum should explain whether the application of U.S. law to customer funds would contravene any public policy in the jurisdiction in which Applicant is domiciled (or any other relevant jurisdiction);

(5) The basis for the conclusion that the FCM Clearing Rules are enforceable (*i.e.*, the conclusion that the Applicant may take default action, pursuant to the FCM Clearing Rules, discretely against each FCM clearing member in respect of FCM customer accounts without interference from the law of insolvency applicable to the FCM clearing member or to Applicant); and

(6) The basis for the conclusion that following the default of an FCM clearing member or of the Applicant, Applicant will be able to comply with the provisions of the U.S. Bankruptcy Code and Commission regulations with respect to the pro rata distribution requirements set forth therein, as well as comply with any relevant order or direction by a U.S. court (including a bankruptcy court) regarding the distribution of customer funds.

In all cases, the memorandum must include separate discussions of the legal analysis and conclusions with respect to: (a) the default of the Applicant, and (b) the default of an FCM clearing member.

■ 32. Revise appendix B to part 39 to read as follows:

Appendix B to Part 39—Subpart C Election Form

COMMODITY FUTURES TRADING COMMISSION

SUBPART C ELECTION FORM

GENERAL INSTRUCTIONS: Intentional misstatements or omissions of fact may constitute federal criminal violations (7 U.S.C. 13 and 18 U.S.C. 1001).

DEFINITIONS

Unless the context requires otherwise, all terms used in this Subpart C Election Form have the same meaning as in the Commodity Exchange Act ("Act"), and in the General Rules and Regulations of the Commodity Futures Trading Commission ("Commission") thereunder. All references to Commission regulations are found at 17 CFR Ch. I.

For purposes of this Subpart C Election Form, the term "Applicant" shall mean a derivatives clearing organization that is filing this Subpart C Election Form with a Form DCO as part of an application for registration as a derivatives clearing organization pursuant to section 5b of the Act and 17 CFR 39.3(a).

GENERAL INSTRUCTIONS

1. Any derivatives clearing organization requesting an election to become subject to subpart C of part 39 of the Commission's regulations must file this Subpart C Election Form. The Subpart C Election Form includes the election to be subject to the provisions of subpart C of part 39 of the Commission's regulations, certain required certifications, disclosures, and exhibits, and any supplements or amendments thereto filed pursuant to 17 CFR 39.31(b) or (c) (collectively, the "Subpart C Election Form").

2. Any derivatives clearing organization wishing to request an extension of up to one year to comply with any of the provisions of 17 CFR 39.34, 17 CFR 39.35 or 17 CFR 39.39, pursuant to 17 CFR 39.34(d) or 17 CFR 39.39(f) must do so prior to filing this Subpart C Election Form. Such requests shall become part of this Subpart C Election Form.

3. Individuals' names, except the executing signature, shall be given in full (Last Name, First Name, Middle Name).

4. The signatures required in this Subpart C Election Form shall be the manual signatures of a duly authorized representative of the derivatives clearing organization as follows: If the Subpart C Election Form is filed by a corporation, it must be signed in the name of the corporation by a principal officer duly authorized; if filed by a limited liability company, it must be signed in the name of the limited liability company by a manager or member duly authorized to sign on the limited liability company's behalf; if filed by a partnership, it must be signed in the name of the partnership by a general partner duly authorized; if filed by an unincorporated organization or association which is not a partnership, it must be signed in the name of such organization or association by the managing agent, *i.e.*, a duly authorized person who directs or manages or who participates in the directing or managing of its affairs.

5. All applicable items must be answered in full.

6. Under section 5b of the Act and the Commission's regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this Subpart C Election Form from any Applicant seeking registration as a derivatives clearing organization and from any registered derivatives clearing organization.

7. Disclosure of the information specified in this Subpart C Election Form is mandatory prior to the processing of the election to become a derivatives clearing organization subject to the provisions of

subpart C of part 39 of the Commission's regulations. The Commission may determine that additional information is required in order to process such election.

8. A Subpart C Election Form that is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Subpart C Election Form, however, shall not constitute a finding that the Subpart C Election Form is acceptable as filed or that the information is true, current or complete.

9. As provided in 17 CFR 39.31(d), except in cases where a derivatives clearing organization submits a request for confidential treatment with the Secretary of the Commission pursuant to the Freedom of Information Act and 17 CFR 145.9, information supplied in this Subpart C Election Form will be included routinely in the public files of the Commission and will be made available for inspection by any interested person.

APPLICATION AMENDMENTS

1. 17 CFR 39.31(b)(3) and (c)(4) require a derivatives clearing organization that has submitted a Subpart C Election Form to promptly amend its Subpart C Election Form if it discovers a material omission or error in, or if there is a material change in, the information provided to the Commission in the Subpart C Election Form or other information provided in connection with the Subpart C Election Form.

2. When amending a Subpart C Election Form, a derivatives clearing organization must re-file the Election and Certifications page, amended if necessary, and including all required executing signatures, and attach thereto revised exhibits or other materials marked to show changes, as applicable.

WHERE TO FILE

1. This Subpart C Election Form must be filed electronically with the Secretary of the Commission in the format and manner specified by the Commission.

2. Any supplemental information must be filed electronically with the Division of Clearing and Risk, or any successor division, in the format and manner specified by the Commission.

COMMODITY FUTURES TRADING COMMISSION

SUBPART C ELECTION FORM

ELECTION AND CERTIFICATIONS

_____

Exact Name of the Derivatives Clearing Organization
(as set forth in its charter, if an Applicant,
or as set forth in its most recent order of registration, if registered with the Commission)

☐ Check here and complete sections 1 and 3 below, if the organization is an Applicant.

☐ Check here and complete sections 2 and 3 below, if the organization currently is registered with the Commission as a derivatives clearing organization.

1. The derivatives clearing organization named above hereby elects to become subject to the provisions of subpart C of part 39 of the Commission's regulations in the event that the Commission approves its application for registration as a derivatives clearing organization.

The derivatives clearing organization and the undersigned each certify that, in the event that the Commission approves the derivatives clearing organization's application for registration and permits its election to become subject to subpart C of part 39 of the Commission's regulations:

a. The derivatives clearing organization will be in compliance with such regulations as of the date set forth in the notice thereof provided by the Commission pursuant to 17 CFR 39.31(c)(2), except to the limited extent that the Commission has granted the derivatives clearing organization an extension of time to comply with: (1) specified provisions of 17 CFR 39.34, pursuant to 17 CFR 39.34(d); and/or (2) specified provisions of 17 CFR 39.35 and/or 17 CFR 39.39, pursuant to 17 CFR 39.39(f);

b. The derivatives clearing organization will be in compliance with all provisions of 17 CFR 39.34, 39.35 and/or 39.39 for which the Commission, pursuant to 17 CFR 39.34(d) and/or 17 CFR 39.39(f), has granted an extension of time to comply in accordance with the terms of such extensions; and

c. The derivatives clearing organization will remain in compliance with the provisions contained in subpart C of part 39 of the Commission's regulations until this election is rescinded pursuant to 17 CFR 39.31(e).

_____
Name of Derivatives Clearing Organization

By:_____
Manual Signature of Duly Authorized Person

_____
Print Name and Title of Signatory

2. The derivatives clearing organization named above hereby elects to become subject to the provisions of subpart C of part 39 of the Commission's regulations as of:

_____ ("Effective Date")
[insert date, which must be **at least 10 business days after the date this Subpart C Election Form is filed with the Commission**].

The derivatives clearing organization and the undersigned each certify that:

a. As of the Effective Date set forth above, the derivatives clearing organization shall be in compliance with subpart C of part 39 of the Commission's regulations, except to the limited extent that the Commission has granted the derivatives clearing organization an extension of time to comply with: (1) specified provisions of 17 CFR 39.34, pursuant to 17 CFR 39.34(d); and/or (2) specified provisions of 17 CFR 39.35 and/or 17 CFR 39.39, pursuant to 17 CFR 39.39(f);

b. The derivatives clearing organization will be in compliance with all provisions of 17 CFR 39.34, 39.35 and/or 39.39 for which the Commission, pursuant to 17 CFR 39.34(d) and/or 17 CFR 39.39(f), has granted an extension of time to comply in accordance with the terms of such extensions; and

c. The derivatives clearing organization will remain in compliance with provisions contained in subpart C of part 39 of the Commission's regulations until this election is rescinded pursuant to 17 CFR 39.31(e).

_____
Name of Derivatives Clearing Organization

By:_____
Manual Signature of Duly Authorized Person

_____
Print Name and Title of Signatory

3. The derivatives clearing organization named above has duly caused this Subpart C Election Form (which includes, as an integral part thereof, the Election and Certifications and all Disclosures and Exhibits) to be signed on its behalf by its duly authorized representative as of the _____ day of _____, 20_____. The derivatives clearing organization and the undersigned each represent hereby that, to the best of their knowledge, all information contained in this Subpart C Election Form is true, current and complete in all material respects. It is understood that all required items including, without limitation, the Election and Certifications and Disclosures and Exhibits, are considered integral parts of this Subpart C Election Form.

_____
Name of Derivatives Clearing Organization

By:_____
Manual Signature of Duly Authorized Person

_____
Print Name and Title of Signatory

COMMODITY FUTURES TRADING COMMISSION

PART 39, SUBPART C ELECTION FORM

DISCLOSURES AND EXHIBITS

Each derivatives clearing organization that requests an election to become subject to the provisions set forth in subpart C of part 39 of the Commission's regulations shall provide the Disclosures and Exhibits set forth below:

DISCLOSURES:

The derivatives clearing organization shall publish on its website in a readily identifiable location, the following documents that are required to be completed pursuant to 17 CFR 39.37:

1. The derivatives clearing organization's responses to the Disclosure Framework for Financial Market Infrastructures ("Disclosure Framework"), published by the Committee on Payments and Market Infrastructure ("CPMI") and the Board of the International Organization of Securities Commissions ("IOSCO"). The derivatives clearing organization's responses must be completed in accordance with section 2.0 and Annex A of the Disclosure Framework and must fully explain how the derivatives clearing organization observes the Principles for Financial Market Infrastructures ("PFMIs") published by CPMI-IOSCO.

   Provide the URL to the specific page on the derivatives clearing organization's website where its responses to the Disclosure Framework may be found:

   _____

2. The most recent quantitative disclosure prepared by the derivatives clearing organization that satisfies the Public Quantitative Disclosure Standards for Central Counterparties published by CPMI-IOSCO ("Quantitative Disclosure").

   If applicable, provide the URL to the specific page on the derivatives clearing organization's website where its Quantitative Disclosure may be found:

   _____

EXHIBITS:

EXHIBIT INSTRUCTIONS:

1. The derivatives clearing organization must include a Table of Contents listing each Exhibit required by this Subpart C Election Form.

2. If the derivatives clearing organization is an Applicant, in its Form DCO, the derivatives clearing organization may summarize such information and provide a cross-reference to the Exhibit in this Subpart C Election Form that contains the required information.

The derivatives clearing organization shall provide the following Exhibits to this Subpart C Election Form:

EXHIBIT A – COMPLIANCE WITH SUBPART C

Attach, as **Exhibit A**, a regulatory compliance chart that sets forth citations to the relevant rules, policies, and procedures of the derivatives clearing organization that address §§ 39.32-39.39 of the Commission's regulations and a narrative summary of the manner in which the derivatives clearing organization will comply with each regulation.

The narrative summary shall: (a) specifically and meaningfully explain the manner in which the derivatives clearing organization will comply with each such regulation; (b) sufficiently integrate references to documents contained in the exhibits to this Subpart C Election Form to clearly convey the derivatives clearing organization's policies and procedures with respect to each regulation; and (c) readily identify within such exhibits those derivatives clearing organization rules and governing documents that support the certifications set forth in this Subpart C Election Form. The narrative summary may be included as part of the compliance chart required by Exhibit A or a separate document within Exhibit A.

All citations and compliance summaries shall be separated by individual regulation and shall be clearly labeled with the corresponding regulation.

EXHIBIT B – FINANCIAL RESOURCES

Attach, as **Exhibit B**, information and documents that demonstrate compliance with the financial resource requirements set forth in § 39.33 of the Commission's regulations, including but not limited to:

a. Valuation of financial resources – Attach as **Exhibit B-1**, a demonstration that assessments for additional guaranty fund contributions (*i.e.*, guaranty fund contributions that are not prefunded) are not included in calculating the financial resources available to meet the derivatives clearing organization's obligations under § 39.33(a) or § 39.11(a)(1).

b. Liquidity resources – Attach as **Exhibit B-2**, a demonstration that the derivatives clearing organization maintains eligible liquidity resources as required under § 39.33(c).

c. Liquidity providers – Attach as **Exhibit B-3**, a demonstration that the derivatives clearing organization's liquidity providers meet the requirements as set forth in § 39.33(d).

d. Documentation of financial resources and liquidity resources – Attach as **Exhibit B-4**, a demonstration that the derivatives clearing organization documents its supporting rationale for, and has appropriate governance arrangements relating to, the amount of total financial resources it maintains pursuant to § 39.33(a) and the amount of total liquidity resources it maintains pursuant to § 39.33(c).

EXHIBIT C – SYSTEM SAFEGUARDS

Attach, as **Exhibit C**, information and documents that demonstrate compliance with the system safeguards requirements set forth in § 39.34 of the Commission's regulations, including but not limited to:

a. Attach as **Exhibit C-1**, a demonstration that, notwithstanding § 39.18(c)(2), the business continuity and disaster recovery plan described in § 39.18(c)(1) and the physical, technological, and personnel resources described in § 39.18(c)(1) enable the derivatives clearing organization to recover its operations and resume daily processing, clearing, and settlement no later than two hours following the disruption, for any disruption including a wide-scale disruption.

b. Attach as **Exhibit C-2**, a demonstration that the derivatives clearing organization maintains a degree of geographic dispersal of physical, technological and personnel resources consistent with the requirements set forth in § 39.34(b).

c. Attach as **Exhibit C-3**, a demonstration that the derivatives clearing organization conducts regular, periodic tests of its business continuity and disaster recovery plans and resources and its capacity to achieve the required recovery time objective in the event of a wide-scale disruption, and that the provisions of § 39.18(e) apply to such testing.

EXHIBIT D – DEFAULT RULES AND PROCEDURES FOR UNCOVERED LOSSES OR SHORTFALLS

Attach, as **Exhibit D**, information and documents that demonstrate compliance with the requirements for default rules and procedures for uncovered losses or shortfalls set forth in § 39.35 of the Commission's regulations, including but not limited to:

a. Allocation of uncovered credit losses – Attach as **Exhibit D-1**, a demonstration that the derivatives clearing organization has explicit rules and procedures that address fully any loss arising from any individual or combined default relating to any clearing member's obligations to the derivatives clearing organization.

b. Allocation of uncovered liquidity shortfalls – Attach as **Exhibit D-2**, a demonstration that the derivatives clearing organization has established rules and/or procedures that enable it to promptly meet all of its settlement obligations, on a same day and, as appropriate, intraday and multiday basis, in the context of the occurrence of the scenarios set forth in § 39.35(b)(1)(i) and (ii). The derivatives clearing organization must demonstrate how such rules and procedures comply with the requirements of § 39.35(b)(2).

EXHIBIT E – RISK MANAGEMENT

Attach, as **Exhibit E**, information and documents that demonstrate compliance with the risk management requirements set forth in § 39.36 of the Commission's regulations, including but not limited to:

a. Stress tests of financial resources – Attach as **Exhibit E-1**, a demonstration that the derivatives clearing organization conducts stress tests of its financial resources in accordance with the standards and practices set forth in § 39.36(a);

b. Sensitivity analysis of margin model – Attach as **Exhibit E-2**, a demonstration that the derivatives clearing organization conducts on a monthly basis or more frequently as appropriate, a sensitivity analysis of its margin models to analyze and monitor model performance and overall margin coverage. The derivatives clearing organization shall demonstrate that the sensitivity analysis is conducted on both actual and hypothetical positions and in accordance with the requirements set forth in § 39.36(b)(2) and (3);

c. Stress tests of liquidity resources – Attach as **Exhibit E-3**, a demonstration that the derivatives clearing organization conducts stress tests of its liquidity resources in accordance with the standards and practices set forth in § 39.36(c);

d. Theoretical and empirical properties – Attach as **Exhibit E-4**, a demonstration that the derivatives clearing organization conducts an assessment of the theoretical and empirical properties of its margin model for all products it clears;

e. Validation – Attach as **Exhibit E-5**, a demonstration that the derivatives clearing organization conducts on an annual basis, a full validation of its financial risk

management model and its liquidity risk management model in accordance with the requirements set forth in § 39.36(e);

f. Custody and investment risk – Attach as **Exhibit E-6**, a demonstration that the custody and investment arrangements of the derivatives clearing organization's own funds and assets are subject to the same requirements as those specified in § 39.15 for the funds and assets of clearing members, and apply to the derivatives clearing organization's own funds and assets to the same extent as if such funds and assets belonged to clearing members; and

g. Settlement banks – Attach as **Exhibit E-7**, a demonstration that the derivatives clearing organization, monitors, manages, and limits its credit and liquidity risks arising from its settlement banks; establishes and monitors adherence to strict criteria for its settlement banks that take account of, among other things, their regulation and supervision, creditworthiness, capitalization, access to liquidity, and operational reliability; and monitors and manages the concentration of credit and liquidity exposures to its settlement banks.

EXHIBIT F – RECOVERY AND WIND-DOWN

Attach, as **Exhibit F**, information and documents that demonstrate compliance with the recovery and wind-down requirements set forth in § 39.39 of the Commission's regulations, including but not limited to:

a. Recovery and wind-down plans – Attach as **Exhibit F-1**, a demonstration that the derivatives clearing organization has separate plans that set forth in detail: recovery or orderly wind-down, necessitated by uncovered credit losses or liquidity shortfalls, and 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. The demonstration shall also include how the plans comply with the requirements of §39.39(c).

b. Financial resources to support recovery – Attach as **Exhibit F-2**, a narrative summary that demonstrates how the financial statements filed with the Commission pursuant to §§ 39.11 and 39.33 demonstrate that the derivatives clearing organization maintains sufficient unencumbered liquid financial assets, funded by the equity of its owners, to implement its recovery or wind-down plans. The narrative summary shall include a description of how the derivatives clearing organization complies with the requirements of § 39.39(d).

c. Additional financial resources – Attach as **Exhibit F-3**, a demonstration that the derivatives clearing organization maintains viable plans for raising additional financial resources as required under § 39.39(e).

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PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

■ 33. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2(a)(12), 12a, 13(c), 13(d), 13(e), and 16(b).

■ 34. In § 140.94, revise paragraph (c) to read as follows:

§ 140.94 Delegation of authority to the Director of the Division of Swap Dealer and Intermediary Oversight and the Director of the Division of Clearing and Risk.

* * * * *

(c) The Commission hereby delegates, until such time as the Commission orders otherwise, the following function to the Director of the Division of Clearing and Risk and to such members of the Commission's staff acting under his or her direction as he or she may designate from time to time:

(1) The authority to review applications for registration as a derivatives clearing organization filed with the Commission under § 39.3(a)(1) of this chapter, to determine that an application is materially complete pursuant to § 39.3(a)(2) of this chapter, to request additional information in support of an application pursuant to § 39.3(a)(3) of this chapter, to extend the review period for an application pursuant to § 39.3(a)(6) of this chapter, to stay the running of the 180-day review period if an application is incomplete pursuant to § 39.3(b)(1) of this chapter, to review requests for amendments to orders of registration filed with the Commission under § 39.3(d)(1) of this chapter, to request additional information in support of a request for an amendment to an order of registration pursuant to § 39.3(d)(2) of this chapter, and to request additional information in support of a rule submission pursuant to § 39.3(g)(3) of this chapter;

(2) All functions reserved to the Commission in § 39.4(a) of this chapter;

(3) All functions reserved to the Commission in § 39.5(b)(2), (b)(3)(ix), (c)(1), and (d)(3) of this chapter;

(4) All functions reserved to the Commission in § 39.10(c)(4)(iv) of this chapter;

(5) All functions reserved to the Commission in § 39.11(b)(1)(v), (b)(2)(ii), (c)(1) and (3), and (f)(1), and (2) of this chapter;

(6) All functions reserved to the Commission in § 39.12(a)(5)(iii) of this chapter;

(7) All functions reserved to the Commission in § 39.13(g)(8)(ii), (h)(1)(i)(C), (h)(1)(ii), (h)(3)(i) and (ii), and (h)(5)(i)(C) of this chapter;

(8) The authority to request additional information in support of a rule submission under §§ 39.13(i)(2) and 39.15(b)(2)(iii) of this chapter;

(9) All functions reserved to the Commission in § 39.19(c)(2), (c)(3)(iv), and (c)(5) of this chapter;

(10) All functions reserved to the Commission in § 39.20(a)(5) of this chapter;

(11) All functions reserved to the Commission in § 39.21(c) of this chapter;

(12) All functions reserved to the Commission in § 39.31 of this chapter; and

(13) The authority to approve the requests described in §§ 39.34(d) and 39.39(f) of this chapter.

* * * * *

Issued in Washington, DC, on April 29, 2019, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Derivatives Clearing Organization General Provisions and Core Principles—Commission Voting Summary, Chairman's Statement, and Commissioner's Statement

Appendix 1—Commission Voting Summary

On this matter, Chairman Giancarlo and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman J. Christopher Giancarlo

Swaps clearing is among the most sweeping and significant of the swaps reforms adopted by the Dodd-Frank Act. By any measure, the CFTC's swaps clearing regime has been robust and highly successful.

In 2011 and 2013, the Commission adopted regulations in part 39 to implement the Dodd-Frank Act's Core Principles for Derivatives Clearing Organizations (DCOs). Since the adoption of these rules, Commission staff has worked with DCOs regarding questions concerning the interpretation and implementation of the regulations, and issued related staff relief or guidance.

As part of Project KISS, the Commission is proposing to revise or delete certain provisions in part 39. These revisions will improve the clarity of the text, codify staff relief and guidance, and simplify processes for registration or reporting. There are also a few new requirements with respect to default procedures and reporting in response to more recent events, such as the launch of bitcoin futures contracts and the Nasdaq Clearing default. For these reasons, I support this proposal.

Appendix 3—Statement of Commissioner Dan M. Berkovitz

Introduction

I support issuing for public comment the notice of proposed rulemaking (''NPRM'') to amend certain provisions of part 39 of the Commission's regulations governing derivatives clearing organizations (''DCOs''). Part 39 generally covers registration and regulation of DCOs that centrally clear futures, options, and swaps regulated by the Commission.

The NPRM includes a number of beneficial provisions. I commend the staff of the Division of Clearing and Risk for this important effort to clarify and clean up some issues in the rules and staff guidance that have accumulated since part 39 was substantively amended in 2011 and 2013. The NPRM also proposes several changes to the regulations that merit scrutiny as outlined below. I particularly look forward to comments on those provisions to help guide the Commission's deliberations on the proposed amendments.

Background

Central clearing of futures positions has been a fundamental risk mitigation measure for derivatives market participants in the United States for well over a hundred years. In more recent times, as futures and swap trading has grown dramatically,[1] central clearing of derivatives including swaps has become a critical element in risk management of the financial system as a whole. In response to the 2008 financial crisis, world leaders at the G20 summit in Pittsburgh established central clearing for derivatives as a core objective in mitigating systemic risk.[2] DCOs are a critical component of the clearing infrastructure, and effective clearinghouse registration and regulation is key to facilitating efficient, sound derivatives markets and preventing another financial crisis.

As described in the NPRM, the Commission adopted regulations in 2011 and

[1] A CFTC study published in 1998 noted that an estimated 272 million futures and options contracts were traded globally in 1986, while recent Futures Industry Association data indicates that 30.28 billion futures and options contracts were traded globally in 2018. *See* CFTC, Division of Economic Analysis, The Global Competitiveness of U.S. Futures Markets Revisited (November 1999); available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/plstudy_53_cftc.pdf;* FIA Releases Annual Trading Statistics showing Record [Exchange Traded Derivatives] Volume in 2018; available at *https://fia.org/articles/fia-releases-annual-trading-statistics-showing-record-etd-volume-2018.* Similarly, the trading of over-the-counter derivatives expanded from about $72 trillion in notional amount in 1998 to about $595 trillion in 2018. *See* Bank of International Settlements, OTC derivatives notional amount outstanding by risk category; available at *https://stats.bis.org/statx/srs/tseries/OTC_DERIV/H:A:A:A:5J:A:5J:A:TO1:TO1:A:A:3:C?t=D5.1&p=20172&x=DER_RISK.3.CL_MARKET_RISK.T:B:D:A&o=w:19981.,s:line.nn,t:Derivatives%20risk%20category.*

[2] *See* G20, Leaders' Statement: The Pittsburgh Summit (Sept. 24–25, 2009); available at *https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.*

2013 to further implement DCO core principles and Title VIII of the Dodd-Frank Act. Based on experience in implementing these regulations and subsequent developments, including the establishment of international principles for clearing, the CFTC staff has provided guidance on the new regulations. It is now appropriate for the Commission to address this experience and these developments through amendments to our regulations.

Codification and Clarification

The NPRM includes numerous amendments that clarify, further define, or provide more explicit direction to market participants. Governance requirements are more fully developed and applied across all DCOs. The NPRM adds new regulations 39.24, 39.25, and 39.26 that establish governance requirements for DCOs to better ensure that DCOs are well managed.[3] These amendments provide greater certainty and uniform rules, and are important not only for fairness and consistency, but to improve risk management across the clearing space. The changes may help guard against risks from governance failures.

While the new governance regulations are beneficial, many of the provisions set out only general principles and do not provide specific guidance or prescriptive standards. I look forward to public comment on whether more explicit guidance or requirements would be appropriate for any specific provisions. In particular, I look forward to comments on whether members should play a larger role in governance.

Under the NPRM, regulation 39.16 would be amended to improve requirements around member default management.[4] The recent member default at NASDAQ Clearing reinforces the importance of default management mechanisms and information sharing when a default occurs.[5] The amendments explicitly require DCOs to have a default committee that must include clearing members. In addition, the amendments would require a DCO to include members in tests of the default management plan. I look forward to comments on how and when DCO members should be included in default management.

In addition to the above, the NPRM would provide a number of more discrete improvements, such as an explicit requirement for initial margin to cover concentration risk; a requirement for DCO personnel to certify certain reports; and several new reporting requirements around settlement bank arrangements, depositories, and liquidity funding arrangements. Clarifying these types of issues will help maintain consistent, objective, and transparent oversight of registered DCOs.

Issues Warranting Further Comment and Consideration

The NPRM includes several proposed amendments that, while beneficial in some respects, may also present additional issues for the Commission to consider in developing the final rule. Comments in these areas would be particularly helpful to inform the Commission in its deliberations.

Changes to regulation 39.13(g)(8) regarding calculation of initial margin and in particular, excess margin, attempt to incorporate in the regulation, and to clarify, staff guidance.[6] Getting initial margin calculations right is critical to providing sufficient resources to cover variation margin shortfalls that may occur when resolving a member's default. The proposed standard for margin to be ''commensurate with the risk presented by each customer account,'' as a principle, seems appropriate. However, little guidance is provided on how that principle should be applied or the appropriate parameters for consideration. Given the importance of initial margin calculations, I look forward to comments on whether the Commission should provide a more detailed standard in the regulation or further guidance on the calculation.

New regulation 39.13(i) provides explicit procedures and requirements for filing DCO rules to implement a cross-margining program with other clearing organizations.[7] From a general policy perspective, establishing explicit procedures in regulation for evaluating such arrangements would facilitate consistent, objective reviews by the Commission.

However, multi-entity cross-margining—which could cross borders and involve multiple regulatory regimes of different regulators—creates additional layers of legal, operational, and financial risk that may be difficult to evaluate. The members of the DCO could be affected in ways not previously contemplated and that may be more obscure to the members and difficult for them to assess. The information that the DCO would be required to provide to the Commission under the NPRM is fashioned from less complex portfolio margining evaluation requirements and is general in nature. Will a bankruptcy involving a member of one of the clearing organizations, the DCO, or the other clearing organization affect the other entity and its members in ways that are not anticipated? Are there margin model risks, such as greater concentration risk across both entities, that are not properly accounted for in the proposed regulations? Do members of the DCO have other concerns and do they have appropriate mechanisms to voice those concerns through the DCO rules, governance structures, and/or CFTC review procedures? I look forward to reviewing the comments on these and other issues regarding the proposed multi-entity cross margining regulations.

Finally, the NPRM would establish regulation 40.5 as the mechanism for Commission review of certain DCO rule sets including: (1) A request to transfer a DCO's open interest—in many cases its entire open interest, (2) cross-margining programs among different clearing organizations—including across borders and for entities subject to different regulators, and (3) commingling of futures, options, and swaps positions in a section 4d(a) futures account. These rule reviews could involve consideration of novel issues, customer protections, and other factors. Accordingly, I have some concern that regulation 40.5 may not provide sufficiently robust review procedures or the Commission with adequate authority to require a DCO to mitigate risks arising from the proposed actions.

Section 40.5 was intended to address voluntary submission of DCO rule changes pursuant to section 5c(c) of the Commodity Exchange Act. While the process for submission and Commission review is more detailed under regulation 40.5 than under regulation 40.6, regulation 40.5 provides for automatic approval after 45 days if that period is not extended by the Commission and a narrow standard of review; namely, the Commission shall approve a DCO rule under review unless it ''is inconsistent with the [Commodity Exchange] Act or Commission's regulations.'' However, the DCO activities to which this review procedure would be applied under the NPRM are significant actions that likely will raise customer protection concerns, entail a sophisticated risk management analysis, and call for a more nuanced review and response than can be accomplished under the blunt ''inconsistent with the CEA'' standard that governs the Commission under regulation 40.5.

Accordingly, I encourage comments on whether regulation 40.5 is the appropriate mechanism to review these proposed DCO actions or whether a more balanced procedure should be employed that would provide the Commission more flexibility to ensure the proposed actions adequately address issues involving customer protection, potential risks to FCMs, and market integrity.

Conclusion

In conclusion, I commend the staff of the Division of Clearing and Risk for their efforts in preparing the NPRM to codify practices that are currently addressed through staff guidance and to conform our regulations to developments that have occurred since the regulations were issued. The NPRM will help clarify and provide explicit rules for clearing organizations that provide a vital service to derivatives markets. Finally, I look forward to the public comments on the NPRM, particularly on the proposed amendments discussed above.

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[3] *See* NPRM section IV.J.

[4] *See* NPRM section IV.F.

[5] *See* Luke Clancy, *Margin or membership? Regulators react to Nasdaq default, Risk.net* (Feb. 7, 2019) available at: *https://www.risk.net/regulation/6366441/margin-or-membership-regulators-react-to-nasdaq-default.*

[6] *See* NPRM section IV.D.3.f.

[7] *See* NPRM section IV.D.5.