

§ 39.3

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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.

Substantial risk to the U.S. financial system means, with respect to a derivatives clearing organization organized outside of the United States, that—

(1) The derivatives clearing organization holds 20% or more of the required initial margin of U.S. clearing members for swaps across all registered and exempt derivatives clearing organizations; and

(2) Twenty percent or more of the initial margin requirements for swaps at that derivatives clearing organization is attributable to U.S. clearing members; *provided, however*, where one or both of these thresholds are identified as being close to 20%, the Commission may exercise discretion in determining whether an identified threshold is satisfied for the purpose of determining whether the derivatives clearing organization poses substantial risk to the U.S. financial system. For purposes of this definition and §39.51, *U.S. clearing member* means a clearing member organized in the United States, a clearing member whose ultimate parent company is organized in the United States, or a futures commission merchant.

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).

[85 FR 4850, Jan. 27, 2020, as amended at 85 FR 67186, Oct. 21, 2020; 86 FR 965, Jan. 7, 2021; 88 FR 53682, Aug. 8, 2023]

§ 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) *Alternative application procedures.* An entity that is organized outside of the United States, is seeking to register as a derivatives clearing organization for the clearing of swaps, and does

not pose substantial risk to the U.S. financial system may apply for registration in accordance with the terms of this paragraph in lieu of filing the application described in paragraph (a)(2) of this section. If the application is approved by the Commission, the derivatives clearing organization's compliance with its home country regulatory regime would satisfy the core principles set forth in section 5b(c)(2) of the Act, subject to the requirements of subpart D of this part. The applicant shall submit to the Commission the following sections of Form DCO, as provided in appendix A to this part: Cover sheet, Exhibit A-1 (regulatory compliance chart), Exhibit A-2 (proposed rulebook), Exhibit A-3 (narrative summary of proposed clearing activities), Exhibit A-4 (detailed business plan), 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), Exhibit A-9 (description of pending legal proceedings or governmental investigations), Exhibit A-10 (agreements with outside service providers with respect to the treatment of customer funds), Exhibits F-1 through F-3 (documents that demonstrate compliance with the treatment of funds requirements with respect to customers of futures commission merchants), and Exhibit R (ring-fencing memorandum). For purposes of this paragraph, the applicant must demonstrate to the Commission, in Exhibit A-1, the extent to which compliance with the applicable legal requirements in its home country would constitute compliance with the core principles set forth in section 5b(c)(2) of the Act. To satisfy this requirement, the applicant shall provide in Exhibit A-1 the citation and full text of each applicable legal requirement in its home country that corresponds with each core principle and an explanation of how the applicant satisfies those requirements. If there is no applicable legal requirement for a particular core principle, the applicant shall provide an explanation of how it would satisfy the core principle.

(4) *Submission of supplemental information.* The filing of a completed applica-

tion 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.

(5) *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.

(6) *Public information.* The following sections of an application for registration as a 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.

(7) *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) 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.

(iii) Nothing in this paragraph 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 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 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, as applicable;

(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 any applicable provisions of the Act, including the core principles applicable to derivatives clearing organizations, and the Commission's regulations 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.

[76 FR 69430, Nov. 8, 2011, as amended at 85 FR 4851, Jan. 27, 2020; 85 FR 67186, Oct. 21, 2020]

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

(a) *Request for approval of rules*. A registered derivatives clearing organiza-

tion 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.

(b) *Self-certification of rules*. Proposed new or amended rules of a derivatives clearing organization not voluntarily submitted for prior Commission approval pursuant to paragraph (a) of this section must be submitted to the Commission with a certification that the proposed new rule or rule amendment complies with the Act and rules thereunder pursuant to the procedures of § 40.6 of this chapter.

(c) *Exemption from self-certification of rules*. Notwithstanding the rule certification requirements of section 5c(c)(1) of the Act and § 40.6 of this chapter, a derivatives clearing organization that is subject to subpart D of this part is not required to certify a rule unless the rule relates to the requirements under section 4d(f) of the Act, parts 1, 22, or 45 of this chapter, or § 39.15.

(d) *Acceptance of new products for clearing*. (1) A dormant derivatives clearing organization within the meaning of § 40.1 of this chapter may not accept for clearing a new product until its registration as a derivatives clearing organization is reinstated under the procedures of § 39.3 of this part; provided however, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

(2) A derivatives clearing organization that accepts for clearing a new product that is a swap shall comply with the requirements of § 39.5 of this part.

(e) *Orders regarding competition*. An applicant for registration or a registered derivatives clearing organization may request that the Commission issue an order concerning whether a rule or practice of the organization is the least anticompetitive means of