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Title 17 —Commodity and Securities Exchanges
Chapter I —Commodity Futures Trading Commission

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PART 39—DERIVATIVES CLEARING ORGANIZATIONS

Authority: 7 U.S.C. 2, 6(c), 7a-1, and 12a(5); 12 U.S.C. 5464; 15 U.S.C. 8325; Section 752 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, title VII, sec. 752, July 21, 2010, 124 Stat. 1749.

Source: 76 FR 69430, Nov. 8, 2011, unless otherwise noted.

Subpart A—General Provisions Applicable to Derivatives Clearing Organizations

§ 39.1 Scope.

The provisions of this subpart A apply to any derivatives clearing organization, as defined under section 1a(15) of the Act and § 1.3 of this chapter, that is registered or is required to register with the Commission as a derivatives clearing organization pursuant to section 5b(a) of the Act, or that is applying for an exemption from registration pursuant to section 5b(h) of the Act.

[86 FR 965, Jan. 7, 2021]

§ 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).

Backtest 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, and any holiday on which a derivatives clearing organization and its domestic financial markets are closed, including a Federal holiday in the United States, as established under 5 U.S.C. 6103.

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.

Exempt derivatives clearing organization means a derivatives clearing organization that the Commission has exempted from registration under section 5b(a) of the Act, pursuant to section 5b(h) of the Act and § 39.6.

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 party or counterparty could incur upon liquidation or expiration of the contract.

Good regulatory standing means, with respect to a derivatives clearing organization that is organized outside of the United States, and is licensed, registered, or otherwise authorized to act as a clearing organization in its home country, that:

(1) In the case of an exempt derivatives clearing organization, either there has been no finding by the home country regulator of material non-observance of the Principles for Financial Market Infrastructures or other relevant home country legal requirements, or there has been a finding by the home country regulator of material non-observance of the Principles for Financial Market Infrastructures or other relevant home country legal requirements but any such finding has been or is being resolved to the satisfaction of the home country regulator by means of corrective action taken by the derivatives clearing organization; or

(2) In the case of a derivatives clearing organization registered subject to compliance with subpart D of this part, either there has been no finding by the home country regulator of material non-observance of the relevant home country legal requirements, or there has been a finding by the home country regulator of material non-observance of the relevant home country legal requirements but any such finding has been or is being resolved to the satisfaction of the home country regulator by means of corrective action taken by the derivatives clearing organization.

Home country means, with respect to a derivatives clearing organization that is organized outside of the United States, the jurisdiction in which the derivatives clearing organization is organized.

Home country regulator means, with respect to a derivatives clearing organization that is organized outside of the United States, an appropriate government authority which licenses, regulates, supervises, or oversees the derivatives clearing organization's clearing activities in the home country.

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.

Principles for Financial Market Infrastructures means the Principles for Financial Market Infrastructures jointly published by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions in April 2012.

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.

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 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.

(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 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.

(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 achieving the objectives, purposes, and policies of the Act.

(f) ***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.

[76 FR 69430, Nov. 8, 2011, as amended at 83 FR 7996, Feb. 23, 2018; 85 FR 4852, Jan. 27, 2020; 85 FR 67187, Oct. 21, 2020]

§ 39.5 Review of swaps for Commission determination on clearing requirement.

(a) ***Eligibility to clear swaps.***

(1) A derivatives clearing organization shall be presumed eligible to accept for clearing any swap that is within a group, category, type, or class of swaps that the derivatives clearing organization already clears. Such presumption of eligibility, however, is subject to review by the Commission.

(2) A derivatives clearing organization that wishes to accept for clearing any swap that is not within a group, category, type, or class of swaps that the derivatives clearing organization already clears shall request a determination by the Commission of the derivatives clearing organization's eligibility to clear such a swap before accepting the swap for clearing. The request, which shall be filed electronically with the Secretary of the Commission, shall address the derivatives clearing organization's ability, if it accepts the swap for clearing, to maintain compliance with section 5b(c)(2) of the Act, specifically:

(i) The sufficiency of the derivatives clearing organization's financial resources; and

(ii) The derivative clearing organization's ability to manage the risks associated with clearing the swap, especially if the Commission determines that the swap is required to be cleared.

(b) ***Swap submissions.***

(1) A derivatives clearing organization shall submit to the Commission each swap, or any group, category, type, or class of swaps that it plans to accept for clearing. The derivatives clearing organization making the submission must be eligible under paragraph (a) of this section to accept for clearing the submitted swap, or group, category, type, or class of swaps.

(2) A derivatives clearing organization shall submit swaps to the Commission, to the extent reasonable and practicable to do so, by group, category, type, or class of swaps. The Commission may in its reasonable discretion consolidate multiple submissions from one derivatives clearing organization or subdivide a derivatives clearing organization's submission as appropriate for review.

(3) The submission shall be filed electronically with the Secretary of the Commission and shall include:

(i) A statement that the derivatives clearing organization is eligible to accept the swap, or group, category, type, or class of swaps for clearing and describes the extent to which, if the Commission were to determine that the swap, or group, category, type, or class of swaps is required to be cleared, the derivatives clearing organization will be able to maintain compliance with section 5b(c)(2) of the Act;

(ii) A statement that includes, but is not limited to, information that will assist the Commission in making a quantitative and qualitative assessment of the following factors:

(A) The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data;

(B) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded;

(C) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract;

(D) The effect on competition, including appropriate fees and charges applied to clearing; and

(E) The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property;

(iii) Product specifications, including copies of any standardized legal documentation, generally accepted contract terms, standard practices for managing any life cycle events associated with the swap, and the extent to which the swap is electronically confirmable;

(iv) Participant eligibility standards, if different from the derivatives clearing organization's general participant eligibility standards;

(v) Pricing sources, models, and procedures, demonstrating an ability to obtain sufficient price data to measure credit exposures in a timely and accurate manner, including any agreements with clearing members to provide price data and copies of executed agreements with third-party price vendors, and information about any price reference index used, such as the name of the index, the source that calculates it, the methodology used to calculate the price reference index and how often it is calculated, and when and where it is published publicly;

(vi) Risk management procedures, including measurement and monitoring of credit exposures, initial and variation margin methodology, methodologies for stress testing and backtesting, settlement procedures, and default management procedures;

(vii) Applicable rules, manuals, policies, or procedures;

(viii) A description of the manner in which the derivatives clearing organization has provided notice of the submission to its members and a summary of any views on the submission expressed by the members (a copy of the notice to members shall be included with the submission); and

(ix) Any additional information specifically requested by the Commission.

(4) The Commission must have received the submission by the open of business on the business day preceding the acceptance of the swap, or group, category, type, or class of swaps for clearing.

(5) The submission will be made available to the public and posted on the Commission Web site for a 30-day public comment period. A derivatives clearing organization that wishes to request confidential treatment for portions of its submission may do so in accordance with the procedures set out in § 145.9(d) of this chapter.

(6) The Commission will review the submission and determine whether the swap, or group, category, type, or class of swaps described in the submission is required to be cleared. The Commission will make its determination not later than 90 days after a complete submission has been received, unless the submitting derivatives clearing organization agrees to an extension. The determination of when such submission is complete shall be at the sole discretion of the Commission. In making a determination that a clearing requirement shall apply, the Commission may impose such terms and conditions to the clearing requirement as the Commission determines to be appropriate.

(c) ***Commission-initiated reviews.***

(1) The Commission, on an ongoing basis, will review swaps that have not been accepted for clearing by a derivatives clearing organization to make a determination as to whether the swaps should be required to be cleared. In undertaking such reviews, the Commission will use information obtained pursuant to Commission regulations from swap data repositories, swap dealers, and major swap participants, and any other available information.

(2) Notice regarding any determination made under paragraph (c)(1) of this section will be made available to the public and posted on the Commission Web site for a 30-day public comment period.

(3) If no derivatives clearing organization has accepted for clearing a particular swap, group, category, type, or class of swaps that the Commission finds would otherwise be subject to a clearing requirement, the Commission will:

(i) Investigate the relevant facts and circumstances;

(ii) Within 30 days of the completion of its investigation, issue a public report containing the results of the investigation; and

(iii) Take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the swap, group, category, type, or class of swaps.

(d) ***Stay of clearing requirement.***

(1) After making a determination that a swap, or group, category, type, or class of swaps is required to be cleared, the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement until the Commission completes a review of the terms of the swap, or group, category, type, or class of swaps and the clearing arrangement.

(2) A counterparty to a swap that wishes to apply for a stay of the clearing requirement for that swap shall submit a written request to the Secretary of the Commission that includes:

(i) The identity and contact information of the counterparty to the swap;

(ii) The terms of the swap subject to the clearing requirement;

(iii) The name of the derivatives clearing organization clearing the swap;

(iv) A description of the clearing arrangement; and

(v) A statement explaining why the swap should not be subject to a clearing requirement.

(3) A derivatives clearing organization that has accepted for clearing a swap, or group, category, type, or class of swaps that is subject to a stay of the clearing requirement shall provide any information requested by the Commission in the course of its review.

(4) The Commission will complete its review not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type, or class of swaps agrees to an extension.

(5) Upon completion of its review, the Commission may:

(i) Determine, subject to any terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type, or class of swaps must be cleared; or

(ii) Determine that the clearing requirement will not apply to the swap, or group, category, type, or class of swaps, but clearing may continue on a non-mandatory basis.

[76 FR 69430, Nov. 8, 2011, as amended at 88 FR 53682, Aug. 8, 2023]

§ 39.6 Exemption from derivatives clearing organization registration.

(a) ***Eligibility for exemption.*** A derivatives clearing organization that is organized outside of the United States shall be eligible for an exemption from registration as a derivatives clearing organization for the clearing of swaps for U.S. persons, and thereby exempt from compliance with provisions of the Act and Commission regulations applicable to derivatives clearing organizations, if:

(1) The derivatives clearing organization is subject to comparable, comprehensive supervision and regulation by a home country regulator as demonstrated by the following:

(i) The derivatives clearing organization is organized in a jurisdiction in which a home country regulator applies to the derivatives clearing organization, on an ongoing basis, statutes, rules, regulations, policies, or a combination thereof that, taken together, are consistent with the Principles for Financial Market Infrastructures;

(ii) The derivatives clearing organization observes the Principles for Financial Market Infrastructures in all material respects; and

(iii) The derivatives clearing organization is in good regulatory standing in its home country; and

(2) A memorandum of understanding or similar arrangement satisfactory to the Commission is in effect between the Commission and the derivatives clearing organization's home country regulator, pursuant to which, among other things, the home country regulator agrees to provide to the Commission any information that the Commission deems necessary to evaluate the initial and continued eligibility of the derivatives clearing organization for exemption from registration or to review its compliance with any conditions of such exemption.

(b) ***Conditions of exemption.*** An exemption from registration as a derivatives clearing organization shall be subject to any conditions the Commission may prescribe including, but not limited to:

(1) ***Clearing by or for U.S. persons and futures commission merchants.*** The exempt derivatives clearing organization shall have rules that limit swaps clearing services for U.S. persons and futures commission merchants to the following circumstances:

(i) A U.S. person that is a clearing member of the exempt derivatives clearing organization may clear swaps for itself and those persons identified in the definition of “proprietary account” set forth in § 1.3 of this chapter;

(ii) A non-U.S. person that is a clearing member of the exempt derivatives clearing organization may clear swaps for any affiliated U.S. person identified in the definition of "proprietary" account set forth in § 1.3 of this chapter; and

(iii) An entity that is registered with the Commission as a futures commission merchant may be a clearing member of the exempt derivatives clearing organization, or otherwise maintain an account with an affiliated broker that is a clearing member, for the purpose of clearing swaps only for itself and those persons identified in the definition of "proprietary account" set forth in § 1.3 of this chapter; and

(2) ***Open access.*** The exempt derivatives clearing organization shall have rules with respect to swaps to which one or more of the counterparties is a U.S. person that shall:

(i) Provide that all swaps with the same terms and conditions, as defined by product specifications established under the exempt derivatives clearing organization's rules, submitted to the exempt derivatives clearing organization for clearing are economically equivalent within the exempt derivatives clearing organization and may be offset with each other within the exempt derivatives clearing organization, to the extent offsetting is permitted by the exempt derivatives clearing organization's rules; and

(ii) Provide that there shall be non-discriminatory clearing of a swap executed bilaterally or on or subject to the rules of an unaffiliated electronic matching platform or trade execution facility.

(3) ***Consent to jurisdiction; designation of agent for service of process.*** The exempt derivatives clearing organization shall:

(i) Consent to jurisdiction in the United States;

(ii) Designate, authorize, and identify to the Commission, an agent in the United States who shall accept any notice or service of process, pleadings, or other documents, including any summons, complaint, order, subpoena, request for information, or any other written or electronic documentation or correspondence issued by or on behalf of the Commission or the United States Department of Justice to the exempt derivatives clearing organization, in connection with any actions or proceedings brought against, or investigations relating to, the exempt derivatives clearing organization or any U.S. person or futures commission merchant that is a clearing member, or that clears swaps through a clearing member, of the exempt derivatives clearing organization; and

(iii) Promptly inform the Commission of any change in its designated and authorized agent.

(4) ***Compliance.*** The exempt derivatives clearing organization shall comply, and shall demonstrate compliance as requested by the Commission, with any condition of its exemption.

(5) ***Inspection of books and records.*** The exempt derivatives clearing organization shall make all documents, books, records, reports, and other information related to its operation as an exempt derivatives clearing organization open to inspection and copying by any representative of the Commission; and in response to a request by any representative of the Commission, the exempt derivatives clearing organization shall, promptly and in the form specified, make the requested books and records available and provide them directly to Commission representatives.

(6) ***Observance of the Principles for Financial Market Infrastructures.*** On an annual basis, within 60 days following the end of its fiscal year, the exempt derivatives clearing organization shall provide to the Commission a certification that it continues to observe the Principles for Financial Market

Infrastructures in all material respects. To the extent the exempt derivatives clearing organization is unable to provide to the Commission an unconditional certification, it must identify the underlying material non-observance of the Principles for Financial Market Infrastructures and identify whether and how such non-observance has been or is being resolved by means of corrective action taken by the exempt derivatives clearing organization.

(7) ***Representation of good regulatory standing.*** On an annual basis, within 60 days following the end of its fiscal year, an exempt derivatives clearing organization shall request and the Commission must receive from a home country regulator a written representation that the exempt derivatives clearing organization is in good regulatory standing.

(8) ***Other conditions.*** The Commission may condition an exemption on any other facts and circumstances it deems relevant.

(c) ***General reporting requirements.***

(1) An exempt derivatives clearing organization shall provide to the Commission the information specified in this paragraph and any other information that the Commission deems necessary, including, but not limited to, information for the purpose of the Commission evaluating the continued eligibility of the exempt derivatives clearing organization for exemption from registration, reviewing compliance by the exempt derivatives clearing organization with any conditions of the exemption, or conducting oversight of U.S. persons and their affiliates, and the swaps that are cleared by such persons through the exempt derivatives clearing organization. Information provided to the Commission under this paragraph shall be submitted in accordance with § 39.19(b).

(2) Each exempt derivatives clearing organization shall provide to the Commission the following information:

(i) A report compiled as of the end of each trading day and submitted to the Commission by 10:00 a.m. U.S. Central time on the following business day, containing:

(A) Initial margin requirements and initial margin on deposit for each U.S. person, with respect to swaps, *provided however* if a clearing member margins on a portfolio basis its own positions and the positions of its affiliates, and either the clearing member or any of its affiliates is a U.S. person, the exempt derivatives clearing organization shall report initial margin on deposit for all such positions on a combined basis for each such clearing member; and

(B) Daily variation margin, separately listing the mark-to-market amount collected from or paid to each U.S. person, with respect to swaps; *provided, however,* if a clearing member margins on a portfolio basis its own positions and the positions of its affiliates, and either the clearing member or any of its affiliates is a U.S. person, the exempt derivatives clearing organization shall separately list the mark-to-market amount collected from or paid to each such clearing member, on a combined basis.

(ii) A report compiled as of the last day of each fiscal quarter of the exempt derivatives clearing organization and submitted to the Commission no later than 17 business days after the end of the exempt derivatives clearing organization's fiscal quarter, containing:

(A) The aggregate clearing volume of U.S. persons during the fiscal quarter, with respect to swaps. If a clearing member is a U.S. person, the volume figure shall include the transactions of the clearing member and all affiliates. If a clearing member is not a U.S. person, the volume figure shall include only transactions of affiliates that are U.S. persons.

(B) The average open interest of U.S. persons during the fiscal quarter, with respect to swaps. If a clearing member is a U.S. person, the open interest figure shall include the positions of the clearing member and all affiliates. If a clearing member is not a U.S. person, the open interest figure shall include only positions of affiliates that are U.S. persons.

(C) A list of U.S. persons and futures commission merchants that are either clearing members or affiliates of any clearing member, with respect to the clearing of swaps, as of the last day of the fiscal quarter.

(iii) Prompt notice regarding any change in the home country regulatory regime that is material to the exempt derivatives clearing organization's continuing observance of the Principles for Financial Market Infrastructures or compliance with any of the requirements set forth in this section or in the order of exemption issued by the Commission;

(iv) As available to the exempt derivatives clearing organization, any assessment of the exempt derivatives clearing organization's or the home country regulator's observance of the Principles for Financial Market Infrastructures, or any portion thereof, by a home country regulator or other national authority, or an international financial institution or international organization;

(v) As available to the exempt derivatives clearing organization, any examination report, examination findings, or notification of the commencement of any enforcement or disciplinary action by a home country regulator;

(vi) Immediate notice of any change with respect to the exempt derivatives clearing organization's licensure, registration, or other authorization to act as a derivatives clearing organization in its home country;

(vii) In the event of a default by a U.S. person or futures commission merchant clearing swaps, with such event of default determined in accordance with the rules of the exempt derivatives clearing organization, immediate notice of the default including the name of the U.S. person or futures commission merchant clearing swaps, a list of the positions held by the U.S. person or futures commission merchant, and the amount of the U.S. person's or futures commission merchant's financial obligation; and

(viii) Notice of action taken against a U.S. person or futures commission merchant clearing swaps by an exempt derivatives clearing organization, no later than two business days after the exempt derivatives clearing organization takes such action against a U.S. person or futures commission merchant.

(d) ***Swap data reporting requirements.*** If an exempt derivatives clearing organization accepts for clearing a swap that has been reported to a swap data repository pursuant to part 45 of this chapter, the exempt derivatives clearing organization shall report to a swap data repository data regarding the two swaps resulting from the novation of the original swap. The exempt derivatives clearing organization shall also report the termination of the original swap to the swap data repository to which the original swap was reported. In order to avoid duplicative reporting for such transactions, the exempt derivatives clearing organization shall have rules that prohibit the reporting, pursuant to part 45 of this chapter, of the two new swaps by the counterparties to the original swap.

(e) *Application procedures.*

(1) An entity seeking to be exempt from registration as a derivatives clearing organization shall file an application for exemption with the Secretary of the Commission in the format and manner specified by the Commission. The Commission will review the application for exemption and may approve or deny the application or, if deemed appropriate, exempt the applicant from registration as a derivatives clearing organization subject to conditions in addition to those set forth in paragraph (b) of this section.

(2) ***Application.*** An applicant for exemption from registration as a derivatives clearing organization shall submit to the Commission the information and documentation described in this section. Such information and documentation shall be clearly labeled as outlined in this section. The Commission will not commence processing an application unless the applicant has filed a complete application. Upon its own initiative, an applicant may file with its completed application for exemption additional information that may be necessary or helpful to the Commission in processing the application. The application shall include:

(i) A cover letter containing the following information:

(A) Exact name of applicant as specified in its charter, and the name under which business will be conducted (including acronyms);

(B) Address of applicant's principal office;

(C) List of principal office(s) and address(es) where clearing activities are/will be conducted;

(D) A list of all regulatory licenses or registrations of the applicant (or exemptions from any licensing requirement) and the regulator granting such license or registration;

(E) Date of the applicant's fiscal year end;

(F) Contact information for the person or persons to whom the Commission should address questions and correspondence regarding the application; and

(G) A signature and date by a duly authorized representative of the applicant.

(ii) A description of the applicant's business plan for providing clearing services as an exempt derivatives clearing organization, including information as to the classes of swaps that will be cleared and whether the swaps are subject to a clearing requirement issued by the Commission or the applicant's home country regulator;

(iii) Documents that demonstrate that the applicant is organized in a jurisdiction in which its home country regulator applies to the applicant, on an ongoing basis, statutes, rules, regulations, policies, or a combination thereof that, taken together, are consistent with the Principles for Financial Market Infrastructures;

(iv) A written representation from the applicant's home country regulator that the applicant is in good regulatory standing;

(v) Copies of the applicant's most recent disclosures that are necessary to observe the Principles for Financial Market Infrastructures, including the financial market infrastructure disclosure template set forth in Annex A to the Disclosure Framework and Assessment Methodology for the Principles for Financial Market Infrastructures, any other such disclosure framework issued

under the authority of the International Organization of Securities Commissions that is required for observance of the Principles for Financial Market Infrastructures, and the URL to the specific page(s) on the applicant's website where such disclosures may be found;

(vi) A representation that the applicant will comply with each of the requirements and conditions of exemption set forth in paragraphs (b), (c), and (d) of this section, and the terms and conditions of its order of exemption as issued by the Commission;

(vii) A copy of the applicant's rules that meet the requirements of paragraphs (b)(2) and (d) of this section, as applicable; and

(viii) The applicant's consent to jurisdiction in the United States, and the name and address of the applicant's designated agent in the United States, pursuant to paragraph (b)(3) of this section.

(3) ***Submission of supplemental information.*** At any time during its review of the application for exemption from registration as a derivatives clearing organization, the Commission may request that the applicant submit supplemental information in order for the Commission to process the application, and the applicant shall file such supplemental information in the format and manner specified by the Commission.

(4) ***Amendments to pending application.*** An applicant for exemption from registration as a derivatives clearing organization 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.

(5) ***Public information.*** The following sections of an application for exemption from registration as a derivatives clearing organization will be public: The cover letter set forth in paragraph (e)(2)(i) of this section; the documentation required in paragraphs (e)(2)(iii) and (e)(2)(v) of this section; rules that meet the requirements of paragraphs (b)(2) and (d) of this section, as applicable; and any other part of the application not covered by a request for confidential treatment, subject to § 145.9 of this chapter.

(f) ***Modification or termination of exemption upon Commission initiative.***

(1) The Commission may, in its discretion and upon its own initiative, terminate or modify the terms and conditions of an order of exemption from derivatives clearing organization registration if the Commission determines that there are changes to or omissions in material facts or circumstances pursuant to which the order of exemption was issued, or that any of the terms and conditions of its order of exemption have not been met, including, but not limited to, the requirement that:

(i) The exempt derivatives clearing organization observes the Principles for Financial Market Infrastructures in all material respects; or

(ii) The exempt derivatives clearing organization is subject to comparable, comprehensive supervision and regulation by its home country regulator.

(2) The Commission shall provide written notification to an exempt derivatives clearing organization that it is considering whether to terminate or modify an exemption pursuant to this paragraph and the basis for that consideration.

(3) The exempt derivatives clearing organization may respond to the notification in writing no later than 30 business days following receipt of the notification, or at such later time as the Commission permits in writing.

(4) Following receipt of a response from the exempt derivatives clearing organization, or after expiration of the time permitted for a response, the Commission may:

(i) Issue an order of termination, effective as of a date to be specified therein. Such specified date shall be intended to provide the exempt derivatives clearing organization with a reasonable amount of time to wind down its swap clearing services for U.S. persons;

(ii) Issue an amended order of exemption that modifies the terms and conditions of the exemption; or

(iii) Provide written notification to the exempt derivatives clearing organization that the exemption will remain in effect without modification to the terms and conditions of the exemption.

(g) ***Termination of exemption upon request by an exempt derivatives clearing organization.***

(1) An exempt derivatives clearing organization may petition the Commission to terminate its exemption if:

(i) Changed circumstances result in the exempt derivatives clearing organization no longer qualifying for an exemption;

(ii) The exempt derivatives clearing organization intends to cease clearing swaps for U.S. persons; or

(iii) In conjunction with the petition, the exempt derivatives clearing organization submits an application for registration in accordance with § 39.3(a)(2) or § 39.3(a)(3), as applicable, to become a registered derivatives clearing organization pursuant to section 5b(a) of the Act.

(2) The petition for termination of exemption shall include a detailed explanation of the facts and circumstances supporting the request and the exempt derivatives clearing organization's plans for, as may be applicable, the liquidation or transfer of the swaps positions and related collateral of U.S. persons.

(3) The Commission shall issue an order of termination within a reasonable time appropriate to the circumstances or, as applicable, in conjunction with the issuance of an order of registration.

(h) ***Notice to clearing members of termination of exemption.*** Following the Commission's issuance of an order of termination (unless issued in conjunction with the issuance of an order of registration), the exempt derivatives clearing organization shall provide immediate notice of such termination to its clearing members. Such notice shall include:

(1) A copy of the Commission's order of termination;

(2) A description of the procedures for orderly disposition of any open swaps positions that were cleared for U.S. persons; and

(3) An instruction to clearing members, requiring that they provide the exempt derivatives clearing organization's notice of such termination to all U.S. persons clearing swaps through such clearing members.

[86 FR 965, Jan. 7, 2021]

§ 39.7 Enforceability.

An agreement, contract or transaction submitted to a derivatives clearing organization for clearing shall not be void, voidable, subject to rescission, or otherwise invalidated or rendered unenforceable as a result of:

(a) A violation by the derivatives clearing organization of the provisions of the Act or of Commission regulations; or

(b) Any Commission proceeding to alter or supplement a rule under section 8a(7) of the Act, to declare an emergency under section 8a(9) of the Act, or any other proceeding the effect of which is to alter, supplement, or require a derivatives clearing organization to adopt a specific rule or procedure, or to take or refrain from taking a specific action.

§ 39.8 Fraud in connection with the clearing of transactions on a derivatives clearing organization.

It shall be unlawful for any person, directly or indirectly, in or in connection with the clearing of transactions by a derivatives clearing organization:

(a) To cheat or defraud or attempt to cheat or defraud any person;

(b) Willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or

(c) Willfully to deceive or attempt to deceive any person by any means whatsoever.

Subpart B—Compliance with Core Principles

§ 39.9 Scope.

Except as otherwise provided by Commission order, the provisions of this subpart B apply to any derivatives clearing organization, as defined under section 1a(15) of the Act and § 1.3 of this chapter, that is registered with the Commission as a derivatives clearing organization pursuant to section 5b of the Act. The provisions of this subpart B do not apply to any exempt derivatives clearing organization, as defined under § 39.2.

[86 FR 968, Jan. 7, 2021]

§ 39.10 Compliance with core principles.

(a) To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with each core principle set forth in section 5b(c)(2) of the Act and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5) of the Act; and

(b) Subject to any rule or regulation prescribed by the Commission, a registered derivatives clearing organization shall have reasonable discretion in establishing the manner by which it complies with each core principle.

(c) ***Chief compliance officer*** —

(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 the 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.

(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 a 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).

(2) ***Chief compliance officer duties.*** The chief compliance officer's duties shall include, but are not limited to:

(i) Reviewing the derivatives clearing organization's compliance with the core principles set forth in section 5b of the Act, and the Commission's regulations thereunder;

(ii) In consultation with the board of directors or the senior officer, resolving any conflicts of interest that may arise;

(iii) Establishing and administering written policies and procedures reasonably designed to prevent violation of the Act;

(iv) Taking reasonable steps to ensure compliance with the Act and Commission regulations relating to agreements, contracts, or transactions, and with Commission regulations prescribed under section 5b of the Act;

(v) Establishing procedures for the remediation of noncompliance issues identified by the chief compliance officer through any compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint; and

(vi) Establishing and following appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(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; 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. When submitted to the Commission, the annual report shall be accompanied by a cover letter, notice, or other document that specifies the date on which it was submitted to the board of directors or the senior officer.

(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) of this part.

(5) ***Recordkeeping.***

(i) The derivatives clearing organization shall maintain:

(A) A copy of all compliance policies and procedures and all other policies and procedures adopted in furtherance of compliance with the Act and Commission regulations;

(B) Copies of materials, including written reports provided to the board of directors or the senior officer in connection with the review of the annual report under paragraph (c)(4)(i) of this section; and

(C) Any records relevant to the annual report, including, but not limited to, work papers and other documents that form the basis of the report, and memoranda, correspondence, other documents, and records that are created, sent, or received in connection with the annual report and contain conclusions, opinions, analyses, or financial data related to the annual report.

(ii) The derivatives clearing organization shall maintain records in accordance with § 1.31 of this chapter and § 39.20 of this part.

(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 fulfill the responsibilities of the position, including access to the board of directors of the organization for which the enterprise risk officer is responsible for managing the risks or an appropriate committee thereof, consistent with the requirements of this section.

[76 FR 69430, Nov. 8, 2011, as amended at 85 FR 4852, Jan. 27, 2020]

§ 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 this provision; 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 may include:

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

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

(3) A financial resource may be allocated, in whole or in part, to satisfy the requirements of either paragraph (a)(1) or paragraph (a)(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, the derivatives clearing organization's rules, or any 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 only that portion of the margin amount on deposit (including initial margin and any add-ons) that is required; and

(B) Use customer margin (including initial margin and any add-ons) 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 customer gains against customer losses 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. The value of the assessments may be determined by using the largest financial exposure in extreme but plausible market conditions prior to netting against required initial margin on deposit.

(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; 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.

(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.

[76 FR 69430, Nov. 8, 2011, as amended at 85 FR 4852, Jan. 27, 2020; 85 FR 35805, June 12, 2020]

§ 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;

(ii) A derivatives clearing organization shall allow all market participants who satisfy participation requirements to become clearing members;

(iii) A derivatives clearing organization shall not exclude or limit clearing membership of certain types of market participants unless the derivatives clearing organization can demonstrate that the restriction is necessary to address credit risk or deficiencies in the participants' operational capabilities that would prevent them from fulfilling their obligations as clearing members.

(iv) A derivatives clearing organization shall not require that clearing members be swap dealers.

(v) A derivatives clearing organization shall not require that clearing members maintain a swap portfolio of any particular size, or that clearing members meet a swap transaction volume threshold.

(vi) No derivatives clearing organization shall require as a condition of accepting a swap for clearing that a futures commission merchant enter into an arrangement with a customer that:

(A) Discloses to the futures commission merchant or any swap dealer or major swap participant the identity of a customer's original executing counterparty;

(B) Limits the number of counterparties with whom a customer may enter into trades;

(C) Restricts the size of the position a customer may take with any individual counterparty, apart from an overall limit for all positions held by the customer at the futures commission merchant;

(D) Impairs a customer's access to execution of a trade on terms that have a reasonable relationship to the best terms available; or

(E) Prevents compliance with the time frames set forth in § 1.74(b), § 23.610(b), or § 39.12(b)(7) of this chapter.

(2) ***Financial resources.***

(i) The participation requirements shall require clearing members to have access to sufficient financial resources to meet obligations arising from participation in the derivatives clearing organization in extreme but plausible market conditions. A derivatives clearing organization may permit such financial resources to include, without limitation, a clearing member's capital, a guarantee from the clearing member's parent, or a credit facility funding arrangement. For purposes of this paragraph, “capital” means adjusted net capital as defined in § 1.17 of this chapter, for futures commission merchants, and net capital as defined in § 240.15c3-1of this title, for broker-dealers, or any similar risk adjusted capital calculation for all other clearing members.

(ii) The participation requirements shall set forth capital requirements that are based on objective, transparent, and commonly accepted standards that appropriately match capital to risk. Capital requirements shall be scalable to the risks posed by clearing members.

(iii) A derivatives clearing organization shall not set a minimum capital requirement of more than $50 million for any person that seeks to become a clearing member in order to clear swaps.

(3) ***Operational requirements.*** The participation requirements shall require clearing members to have adequate operational capacity to meet obligations arising from participation in the derivatives clearing organization. The requirements shall include, but are not limited to: the ability to process expected volumes and values of transactions cleared by a clearing member within required time frames, including at peak times and on peak days; the ability to fulfill collateral, payment, and delivery obligations imposed by the derivatives clearing organization; and the ability to participate in default management activities under the rules of the derivatives clearing organization and in accordance with § 39.16 of this part.

(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) ***Product eligibility.***

(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:

(i) Trading volume;

(ii) Liquidity;

(iii) Availability of reliable prices;

(iv) Ability of market participants to use portfolio compression with respect to a particular swap product;

(v) Ability of the derivatives clearing organization and clearing members to gain access to the relevant market for purposes of creating, liquidating, transferring, auctioning, and/or allocating positions;

(vi) Ability of the derivatives clearing organization to measure risk for purposes of setting margin requirements; and

(vii) Operational capacity of the derivatives clearing organization and clearing members to address any unusual risk characteristics of a product.

(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.

(3) A derivatives clearing organization shall provide for non-discriminatory clearing of a swap executed bilaterally or on or subject to the rules of an unaffiliated swap execution facility or designated contract market.

(4) A derivatives clearing organization shall not require that one of the original executing parties be a clearing member in order for a product to be eligible for clearing.

(5) A derivatives clearing organization shall select product unit sizes and other terms and conditions that maximize liquidity, facilitate transparency in pricing, promote open access, and allow for effective risk management. To the extent appropriate to further these objectives, a derivatives clearing organization shall select product units for clearing purposes that are smaller than the product units in which trades submitted for clearing were executed.

(6) A derivatives clearing organization that clears swaps shall have rules providing that, upon acceptance of a swap by the derivatives clearing organization for clearing:

(i) The original swap is extinguished;

(ii) The original swap is replaced by an equal and opposite swap between the derivatives clearing organization and each clearing member acting as principal for a house trade or acting as agent for a customer trade;

(iii) All terms of a cleared swap must conform to product specifications established under derivatives clearing organization rules; and

(iv) If a swap is cleared by a clearing member on behalf of a customer, all terms of the swap, as carried in the customer account on the books of the clearing member, must conform to the terms of the cleared swap established under the derivatives clearing organization's rules.

(7) *Time frame for clearing* —

(i) ***Coordination with markets and clearing members.***

(A) Each derivatives clearing organization shall coordinate with each designated contract market and swap execution facility that lists for trading a product that is cleared by the derivatives clearing organization in developing rules and procedures to facilitate prompt, efficient, and accurate processing of all transactions submitted to the derivatives clearing organization for clearing.

(B) Each derivatives clearing organization shall coordinate with each clearing member that is a futures commission merchant, swap dealer, or major swap participant to establish systems that enable the clearing member, or the derivatives clearing organization acting on its behalf, to accept or reject each trade submitted to the derivatives clearing organization for clearing by or for the clearing member or a customer of the clearing member as quickly as would be technologically practicable if fully automated systems were used.

(ii) ***Transactions executed competitively on or subject to the rules of a designated contract market or swap execution facility.*** A derivatives clearing organization shall have rules that provide that the derivatives clearing organization will accept or reject for clearing as quickly after execution as would be technologically practicable if fully automated systems were used, all contracts that are listed for clearing by the derivatives clearing organization and are executed competitively on or subject to the rules of a designated contract market or a swap execution facility. The derivatives clearing organization shall accept all trades:

(A) For which the executing parties have clearing arrangements in place with clearing members of the derivatives clearing organization;

(B) For which the executing parties identify the derivatives clearing organization as the intended clearinghouse; and

(C) That satisfy the criteria of the derivatives clearing organization, including but not limited to applicable risk filters; provided that such criteria are non-discriminatory across trading venues and are applied as quickly as would be technologically practicable if fully automated systems were used.

(iii) ***Swaps not executed on or subject to the rules of a designated contract market or a swap execution facility or executed non-competitively on or subject to the rules of a designated contract market or a swap execution facility.*** A derivatives clearing organization shall have rules that provide that the derivatives clearing organization will accept or reject for clearing as quickly after submission to the derivatives clearing organization as would be technologically practicable if fully automated systems were used, all swaps that are listed for clearing by the derivatives clearing organization and are not executed on or subject to the rules of a designated contract market or a swap execution facility or executed non-competitively on or subject to the rules of a designated contract market or a swap execution facility. The derivatives clearing organization shall accept all trades:

(A) That are submitted by the parties to the derivatives clearing organization, in accordance with § 23.506 of this chapter;

(B) For which the executing parties have clearing arrangements in place with clearing members of the derivatives clearing organization;

(C) For which the executing parties identify the derivatives clearing organization as the intended clearinghouse; and

(D) That satisfy the criteria of the derivatives clearing organization, including but not limited to applicable risk filters; provided that such criteria are non-discriminatory across trading venues and are applied as quickly as would be technologically practicable if fully automated systems were used.

(8) ***Confirmation.*** A derivatives clearing organization shall provide each clearing member carrying a cleared swap with a definitive written record of the terms of the transaction which shall legally supersede any previous agreement and serve as a confirmation of the swap. The confirmation of all terms of the transaction shall take place at the same time as the swap is accepted for clearing.

[76 FR 69430, Nov. 8, 2011, as amended at 77 FR 21309, Apr. 9, 2012; 85 FR 4855, Jan. 27, 2020]

§ 39.13 Risk management.

(a) ***General.*** A derivatives clearing organization shall ensure that it possesses the ability to manage the risks associated with discharging the responsibilities of the derivatives clearing organization through the use of appropriate tools and procedures.

(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.

(c) ***Chief risk officer.*** A derivatives clearing organization shall have a chief risk officer who shall be responsible for implementing the risk management framework, including the procedures, policies and controls described in paragraph (b) of this section, and for making appropriate recommendations to the derivatives clearing organization's risk management committee or board of directors, as applicable, regarding the derivatives clearing organization's risk management functions.

(d) [Reserved]

(e) ***Measurement of credit exposure.*** A derivatives clearing organization shall:

(1) Measure its credit exposure to each clearing member and mark to market such clearing member's open house and customer positions at least once each business day; and

(2) Monitor its credit exposure to each clearing member periodically during each business day.

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

(1) The operations of the derivatives clearing organization would not be disrupted; and

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

(g) ***Margin requirements*** —

(1) ***General.*** Each model and parameter used in setting initial margin requirements shall be risk-based and reviewed on a regular basis.

(2) ***Methodology and coverage.***

(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.

(ii) A derivatives clearing organization shall use models that generate initial margin requirements sufficient to cover the derivatives clearing organization's potential future exposures to clearing members based on price movements in the interval between the last collection of variation margin and the time within which the derivatives clearing organization estimates that it would be able to liquidate a defaulting clearing member's positions (liquidation time); *provided, however,* that a derivatives clearing organization shall use:

(A) A minimum liquidation time that is one day for futures and options;

(B) A minimum liquidation time that is one day for swaps on agricultural commodities, energy commodities, and metals;

(C) A minimum liquidation time that is five days for all other swaps; or

(D) Such longer liquidation time as is appropriate based on the specific characteristics of a particular product or portfolio; *provided further* that the Commission, by order, may establish shorter or longer liquidation times for particular products or portfolios.

(iii) The actual coverage of the initial margin requirements produced by such models, along with projected measures of the models' performance, shall meet an established confidence level of at least 99 percent, based on data from an appropriate historic time period, for:

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

(B) Each spread within or between products for which there is a defined spread margin rate;

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

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

(iv) A derivatives clearing organization shall determine the appropriate historic time period based on the characteristics, including volatility patterns, as applicable, of each product, spread, account, or portfolio.

(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. Where no material changes to the margin model have occurred, previous validations can be reviewed and affirmed as part of the annual review process. 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) ***Spread and portfolio margins.***

(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:

(A) The products on which the positions are based are complements of, or substitutes for, each other;

(B) One product is a significant input into the other product(s);

(C) The products share a significant common input; or

(D) The prices of the products are influenced by common external factors.

(ii) A derivatives clearing organization shall regularly review its margin reductions and the correlations on which they are based.

(5) ***Price data.*** A derivatives clearing organization shall have a reliable source of timely price data in order to measure the derivatives clearing organization's credit exposure accurately. A derivatives clearing organization shall also have written procedures and sound valuation models for addressing circumstances where pricing data is not readily available or reliable.

(6) ***Daily review.*** On a daily basis, a derivatives clearing organization shall determine the adequacy of its initial margin requirements.

(7) ***Backtests.*** A derivatives clearing organization shall conduct backtests, as defined in § 39.2 of this part, 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 backtests 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) of this part, by beneficial owner.

(ii) On at least a monthly basis, a derivatives clearing organization shall conduct backtests 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) of this part, by beneficial owner.

(iii) In conducting backtests 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 individual customer account 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.

(E) For purposes of this paragraph (g)(8)(i), each separate account of a separate account customer (as such terms are defined in § 1.44 of this chapter) shall be treated as an account of a separate individual customer.

(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 clearing initial margin requirements for products or portfolios. The derivatives clearing organization shall also have reasonable discretion in determining whether and by how much customer initial margin requirements shall, at a minimum, exceed clearing initial margin requirements for categories of customers determined by the clearing member to have heightened risk profiles. 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, except as provided for in § 1.44 of this chapter.

(9) ***Time deadlines.*** A derivatives clearing organization shall establish and enforce time deadlines for initial and variation margin payments to the derivatives clearing organization by its clearing members.

(10) ***Types of assets.*** A derivatives clearing organization shall limit the assets it accepts as initial margin to those that have minimal credit, market, and liquidity risks. A derivatives clearing organization may take into account the specific risk-reducing properties that particular assets have in a particular portfolio. A derivatives clearing organization may accept letters of credit as initial margin for futures and options on futures but shall not accept letters of credit as initial margin for swaps.

(11) ***Valuation.*** A derivatives clearing organization shall use prudent valuation practices to value assets posted as initial margin on a daily basis.

(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.

(13) ***Concentration limits or charges.*** A derivatives clearing organization shall apply appropriate limitations or charges on the concentration of assets posted as initial margin, as necessary, in order to ensure its ability to liquidate such assets quickly with minimal adverse price effects, and shall evaluate the appropriateness of any such concentration limits or charges, on at least a monthly basis.

(14) ***Pledged assets.*** If a derivatives clearing organization permits its clearing members to pledge assets for initial margin while retaining such assets in accounts in the names of such clearing members, the derivatives clearing organization shall ensure that such assets are unencumbered and that such a pledge has been validly created and validly perfected in the relevant jurisdiction.

(h) ***Other risk control mechanisms*** —

(1) ***Risk limits.***

(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. The derivatives clearing organization shall have reasonable discretion in determining:

(A) The method of computing risk exposure;

(B) The applicable threshold(s); and

(C) The applicable financial resources under this provision; provided however, that the ratio of exposure to capital must remain the same across all capital levels. The Commission may review such methods, thresholds, and financial resources and require the application of different methods, thresholds, or financial resources, as appropriate.

(ii) A derivatives clearing organization may permit a clearing member to exceed the threshold(s) applied pursuant to paragraph (h)(1)(i) of this section provided that the derivatives clearing organization requires the clearing member to post additional initial margin that the derivatives

clearing organization deems sufficient to appropriately eliminate excessive risk exposure at the clearing member. The Commission may review the amount of additional initial margin and require a different amount of additional initial margin, as appropriate.

(2) ***Large trader reports.*** A derivatives clearing organization shall obtain from its clearing members or from a relevant designated contract market or swap execution facility, copies of all reports that are required to be filed with the Commission by, or on behalf of, such clearing members pursuant to parts 17 and 20 of this chapter. A derivatives clearing organization shall review such reports on a daily basis to ascertain the risk of the overall portfolio of each large trader, 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, and shall take additional actions with respect to such clearing members, when appropriate, as specified in paragraph (h)(6) of this section, in order to address any risks posed by any such large trader.

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

(4) ***Portfolio compression.*** A derivatives clearing organization shall make portfolio compression exercises available, on a regular and voluntary basis, for its clearing members that clear swaps, to the extent that such exercises are appropriate for those swaps that it clears; *provided, however,* a derivatives clearing organization is not required to develop its own portfolio compression services, and is only required to make such portfolio compression exercises available, if applicable portfolio compression services have been developed by a third party.

(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; and

(B) Require its clearing members to provide to the derivatives clearing organization or the Commission, upon request, information and documents 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.

(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.

(iii) A derivatives clearing organization that clears fully collateralized positions may exclude from the requirements of paragraphs (h)(5)(i) and (ii) of this section those clearing members that clear only fully collateralized positions.

(6) ***Additional authority.*** A derivatives clearing organization shall take additional actions with respect to particular clearing members, when appropriate, based on the application of objective and prudent risk management standards including, but not limited to:

(i) Imposing enhanced capital requirements;

(ii) Imposing enhanced margin requirements;

(iii) Imposing position limits;

(iv) Prohibiting an increase in positions;

(v) Requiring a reduction of positions;

(vi) Liquidating or transferring positions; and

(vii) Suspending or revoking clearing membership.

(i) ***Cross-margining.***

(1) A derivatives clearing organization that seeks to implement or modify a cross-margining program with one or more clearing organizations shall submit rules for Commission approval pursuant to § 40.5 of this chapter. The submission shall include information sufficient for the Commission to understand the risks that would be posed by the program and the means by which the derivatives clearing organization would address and mitigate those risks.

(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.

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§ 39.14 Settlement procedures.

(a) ***Definitions*** —

(1) ***Settlement.*** For purposes of this section, “settlement” means:

(i) Payment and receipt of variation margin for futures, options, and swaps;

(ii) Payment and receipt of option premiums;

(iii) Deposit and withdrawal of initial margin for futures, options, and swaps;

(iv) All payments due in final settlement of futures, options, and swaps on the final settlement date with respect to such positions; and

(v) All other cash flows collected from or paid to each clearing member, including but not limited to, payments related to swaps such as coupon amounts.

(2) ***Settlement bank.*** For purposes of this section, "settlement bank" means a bank that maintains an account either for the derivatives clearing organization or for any of its clearing members, which is used for the purpose of any settlement described in paragraph (a)(1) above.

(b) ***Daily settlements.*** Except as otherwise provided by Commission order, a derivatives clearing organization shall effect a settlement with each clearing member at least once each business day, and shall have the authority and operational capacity to effect a settlement with each clearing member, on an intraday basis, either routinely, when thresholds specified by the derivatives clearing organization are breached, or in times of extreme market volatility.

(c) ***Settlement banks.*** A derivatives clearing organization shall employ settlement arrangements that eliminate or strictly limit its exposure to settlement bank risks, including the credit and liquidity risks arising from the use of such bank(s) to effect settlements with its clearing members, as follows:

(1) A derivatives clearing organization shall have documented criteria that must be met by any settlement bank used by the derivatives clearing organization or its clearing members, including criteria addressing the capitalization, creditworthiness, access to liquidity, operational reliability, and regulation or supervision of such bank(s).

(2) A derivatives clearing organization shall monitor each approved settlement bank on an ongoing basis to ensure that such bank continues to meet the criteria established pursuant to paragraph (c)(1) of this section.

(3) A derivatives clearing organization shall monitor the full range and concentration of its exposures to its own and its clearing members' settlement bank(s) and assess its own and its clearing members' potential losses and liquidity pressures in the event that the settlement bank with the largest share of settlement activity were to fail. A derivatives clearing organization shall take any one or more of the following actions, to the extent that any such action or actions are reasonably necessary in order to eliminate or strictly limit such exposures:

(i) Maintain settlement accounts at one or more additional settlement banks; and/or

(ii) Approve one or more additional settlement banks that its clearing members could choose to use; and/or

(iii) Impose concentration limits with respect to one or more of its own or its clearing members' settlement banks; and/or

(iv) Take any other appropriate actions.

(d) ***Settlement finality.*** A derivatives clearing organization shall ensure that settlements are final when effected by ensuring that it has entered into legal agreements that state that settlement fund transfers are irrevocable and unconditional no later than when the derivatives clearing organization's accounts are debited or credited; provided, however, a derivatives clearing organization's legal agreements with its

settlement banks may provide for the correction of errors. A derivatives clearing organization's legal agreements with its settlement banks shall state clearly when settlement fund transfers will occur and a derivatives clearing organization shall routinely confirm that its settlement banks are effecting fund transfers as and when required by such legal agreements.

(e) ***Recordkeeping.*** A derivatives clearing organization shall maintain an accurate record of the flow of funds associated with each settlement.

(f) ***Netting arrangements.*** A derivatives clearing organization shall possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization.

(g) ***Physical delivery.*** With respect to products that are settled by physical transfers of the underlying instruments or commodities, a derivatives clearing organization shall:

(1) Establish rules that clearly state each obligation that the derivatives clearing organization has assumed with respect to physical deliveries, including whether it has an obligation to make or receive delivery of a physical instrument or commodity, or whether it indemnifies clearing members for losses incurred in the delivery process; and

(2) Ensure that the risks of each such obligation are identified and managed.

§ 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.*** 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 sections 4d(a) or 4d(f) of the Act, the derivatives clearing organization shall file rules for Commission approval pursuant to the requirements and standard of review of § 40.5 of this chapter. Such rule submission shall include, at a minimum, the following:

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

(ii) Analysis of the risk characteristics of the eligible products and of the derivatives clearing organization's ability to manage those risks, addressing any characteristics that are unusual in relation to the other products cleared by the derivatives clearing organization, such as margining, liquidity, default management, pricing, or other risk characteristics;

(iii) 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;

(iv) A description of any additional requirements that would apply to clearing members permitted to commingle eligible products;

(v) A description of any risk management changes that the derivatives clearing organization will implement to oversee its clearing members' risk management of eligible products, or an analysis of why existing risk management systems and procedures are adequate in connection with the proposed commingling;

(vi) 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, including a discussion of any default management procedures that are unique to the products eligible for commingling;

(vii) A discussion of the extent to which the derivatives clearing organization anticipates allowing portfolio margining of commingled positions, including a description and analysis of any margin reduction applied to correlated positions and the language of any applicable clearing rules or procedures, and an express confirmation that any portfolio margining will be allowed only as permitted under § 39.13(g)(4); and

(viii) Any other information necessary for the Commission to determine the rule submission's compliance with the Act and the Commission's regulations in this chapter, which the Commission may request as supplemental information if not provided in the initial submission. The Commission may extend the review period for the rule submission in accordance with § 40.5(d) of this chapter in order to request and obtain supplemental information as necessary.

(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.

[76 FR 69430, Nov. 8, 2011, as amended at 85 FR 4856, Jan. 27, 2020; 88 FR 53683, Aug. 8, 2023]

§ 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 and participants in a test of its default management plan at least on an annual basis to the extent the plan relies on their participation.

(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.

(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 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;

(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;

(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; and

(3) A derivatives clearing organization shall make its default rules publicly available as provided in § 39.21 of this part.

(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.

(e) ***Fully collateralized positions.*** A derivatives clearing organization may satisfy the requirements of paragraphs (a), (b), and (c) of this section by having rules that permit it to clear only fully collateralized positions.

[76 FR 69430, Nov. 8, 2011, as amended at 85 FR 4857, Jan. 27, 2020]

§ 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)(xvi).

(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.

[76 FR 69430, Nov. 8, 2011, as amended at 85 FR 4858, Jan. 27, 2020]

§ 39.18 System safeguards.

(a) ***Definitions.*** For purposes of this section and § 39.34:

Controls mean the safeguards or countermeasures employed by the derivatives clearing organization in order to protect the reliability, security, or capacity of its automated systems or the confidentiality, integrity, or availability of its data and information, and in order to enable the derivatives clearing organization to fulfill its statutory and regulatory responsibilities.

Controls testing means assessment of the derivatives clearing organization's controls to determine whether such controls are implemented correctly, are operating as intended, and are enabling the derivatives clearing organization to meet the requirements established by this section.

Enterprise technology risk assessment means a written assessment that includes, but is not limited to, an analysis of threats and vulnerabilities in the context of mitigating controls. An enterprise technology risk assessment identifies, estimates, and prioritizes risks to a derivatives clearing organization's operations or assets, or to market participants, individuals, or other entities, resulting from impairment of the confidentiality, integrity, or availability of data and information or the reliability, security, or capacity of automated systems.

External penetration testing means attempts to penetrate a derivatives clearing organization's automated systems from outside the systems' boundaries to identify and exploit vulnerabilities. Methods of conducting external penetration testing include, but are not limited to, methods for circumventing the security features of an automated system.

Internal penetration testing means attempts to penetrate a derivatives clearing organization's automated systems from inside the systems' boundaries to identify and exploit vulnerabilities. Methods of conducting internal penetration testing include, but are not limited to, methods for circumventing the security features of an automated system.

Key controls means those controls that an appropriate risk analysis determines are either critically important for effective system safeguards or intended to address risks that evolve or change more frequently and therefore require more frequent review to ensure their continuing effectiveness in addressing such risks.

Recovery time objective means the time period within which a derivatives clearing organization should be able to achieve recovery and resumption of processing, clearing, and settlement of transactions, after those capabilities become temporarily inoperable for any reason up to or including a wide-scale disruption.

Relevant area means the metropolitan or other geographic area within which a derivatives clearing organization has physical infrastructure or personnel necessary for it to conduct activities necessary to the processing, clearing, and settlement of transactions. The term “relevant area” also includes communities economically integrated with, adjacent to, or within normal commuting distance of that metropolitan or other geographic area.

Security incident means a cybersecurity or physical security event that actually jeopardizes or has a significant likelihood of jeopardizing automated system operation, reliability, security, or capacity, or the availability, confidentiality or integrity of data.

Security incident response plan means a written plan documenting the derivatives clearing organization's policies, controls, procedures, and resources for identifying, responding to, mitigating, and recovering from security incidents, and the roles and responsibilities of its management, staff, and independent contractors in responding to security incidents. A security incident response plan may be a separate document or a business continuity-disaster recovery plan section or appendix dedicated to security incident response.

Security incident response plan testing means testing of a derivatives clearing organization's security incident response plan to determine the plan's effectiveness, identify its potential weaknesses or deficiencies, enable regular plan updating and improvement, and maintain organizational preparedness and resiliency with respect to security incidents. Methods of conducting security incident response plan testing may include, but are not limited to, checklist completion, walk-through or table-top exercises, simulations, and comprehensive exercises.

Vulnerability testing means testing of a derivatives clearing organization's automated systems to determine what information may be discoverable through a reconnaissance analysis of those systems and what vulnerabilities may be present on those systems.

Wide-scale disruption means an event that causes a severe disruption or destruction of transportation, telecommunications, power, water, or other critical infrastructure components in a relevant area, or an event that results in an evacuation or unavailability of the population in a relevant area.

(b) ***Program of risk analysis and oversight*** —

(1) ***General.*** A derivatives clearing organization shall establish and maintain a program of risk analysis and oversight with respect to its operations and automated systems to identify and minimize sources of operational risk through:

(i) The development of appropriate controls and procedures; and

(ii) The development of automated systems that are reliable, secure, and have adequate scalable capacity.

(2) ***Elements of program.*** A derivatives clearing organization's program of risk analysis and oversight with respect to its operations and automated systems, as described in paragraph (b)(1) of this section, shall address each of the following elements:

(i) Information security, including, but not limited to, controls relating to: Access to systems and data (including, least privilege, separation of duties, account monitoring and control); user and device identification and authentication; security awareness training; audit log maintenance, monitoring, and analysis; media protection; personnel security and screening; automated system and communications protection (including, network port control, boundary defenses, encryption); system and information integrity (including, malware defenses, software integrity monitoring); vulnerability management; penetration testing; security incident response and management; and any other elements of information security included in generally accepted best practices;

(ii) Business continuity and disaster recovery planning and resources, including, but not limited to the controls and capabilities described in paragraph (c) of this section; and any other elements of business continuity and disaster recovery planning and resources included in generally accepted best practices;

(iii) Capacity and performance planning, including, but not limited to, controls for monitoring the derivatives clearing organization's systems to ensure adequate scalable capacity (including, testing, monitoring, and analysis of current and projected future capacity and performance, and of possible capacity degradation due to planned automated system changes); and any other elements of capacity and performance planning included in generally accepted best practices;

(iv) Systems operations, including, but not limited to, system maintenance; configuration management (including, baseline configuration, configuration change and patch management, least functionality, inventory of authorized and unauthorized devices and software); event and problem response and management; and any other elements of system operations included in generally accepted best practices;

(v) Systems development and quality assurance, including, but not limited to, requirements development; pre-production and regression testing; change management procedures and approvals; outsourcing and vendor management; training in secure coding practices; and any other elements of systems development and quality assurance included in generally accepted best practices; and

(vi) Physical security and environmental controls, including, but not limited to, physical access and monitoring; power, telecommunication, and environmental controls; fire protection; and any other elements of physical security and environmental controls included in generally accepted best practices.

(3) ***Standards for program.*** In addressing the elements listed under paragraph (b)(2) of this section, a derivatives clearing organization shall follow generally accepted standards and industry best practices with respect to the development, operation, reliability, security, and capacity of automated systems.

(4) ***Resources.*** A derivatives clearing organization shall establish and maintain resources that allow for the fulfillment of each obligation and responsibility of the derivatives clearing organization, including the daily processing, clearing, and settlement of transactions, in light of any risk to its operations and automated systems. The derivatives clearing organization shall periodically verify the adequacy of such resources.

(c) ***Business continuity and disaster recovery*** —

(1) ***General.*** A derivatives clearing organization shall establish and maintain a business continuity and disaster recovery plan, emergency procedures, and physical, technological, and personnel resources sufficient to enable the timely recovery and resumption of operations and the fulfillment of each obligation and responsibility of the derivatives clearing organization, including, but not limited to, the daily processing, clearing, and settlement of transactions, following any disruption of its operations.

(2) ***Recovery time objective.*** A derivatives clearing organization's business continuity and disaster recovery plan, as described in paragraph (c)(1) of this section, shall have, and the derivatives clearing organization shall maintain physical, technological, and personnel resources sufficient to meet, a recovery time objective of no later than the next business day following a disruption.

(3) ***Coordination of plans.*** A derivatives clearing organization shall, to the extent practicable:

(i) Coordinate its business continuity and disaster recovery plan with those of its clearing members, in a manner adequate to enable effective resumption of daily processing, clearing, and settlement of transactions following a disruption;

(ii) Initiate and coordinate periodic, synchronized testing of its business continuity and disaster recovery plan with those of its clearing members; and

(iii) Ensure that its business continuity and disaster recovery plan takes into account the plans of its providers of essential services, including telecommunications, power, and water.

(d) ***Outsourcing.***

(1) A derivatives clearing organization shall maintain the resources required under paragraphs (b)(4) and (c)(1) of this section either:

(i) Using its own employees as personnel, and property that it owns, licenses, or leases; or

(ii) Through written contractual arrangements with another derivatives clearing organization or other service provider.

(2) ***Retention of responsibility.*** A derivatives clearing organization that enters into a contractual outsourcing arrangement shall retain complete responsibility for any failure to meet the requirements specified in paragraphs (b) and (c) of this section. The derivatives clearing organization must employ personnel with the expertise necessary to enable it to supervise the service provider's delivery of the services.

(3) ***Testing of resources.*** The testing referred to in paragraph (e) of this section shall apply to all of the derivatives clearing organization's own and outsourced resources, and shall verify that all such resources will work together effectively. Where testing is required to be conducted by an independent contractor, the derivatives clearing organization shall engage a contractor that is independent from both the derivatives clearing organization and any outside service provider used to design, develop, or maintain the resources being tested.

(e) ***Testing*** —

(1) ***General.*** A derivatives clearing organization shall conduct regular, periodic, and objective testing and review of:

(i) Its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity; and

(ii) Its business continuity and disaster recovery capabilities, using testing protocols adequate to ensure that the derivatives clearing organization's backup resources are sufficient to meet the requirements of paragraph (c) of this section.

(2) ***Vulnerability testing.*** A derivatives clearing organization shall conduct vulnerability testing of a scope sufficient to satisfy the requirements set forth in paragraph (e)(8) of this section.

(i) A derivatives clearing organization shall conduct such vulnerability testing at a frequency determined by an appropriate risk analysis, but no less frequently than quarterly.

(ii) Such vulnerability testing shall include automated vulnerability scanning, which shall follow generally accepted best practices.

(iii) A derivatives clearing organization shall conduct vulnerability testing by engaging independent contractors or by using employees of the derivatives clearing organization who are not responsible for development or operation of the systems or capabilities being tested.

(3) ***External penetration testing.*** A derivatives clearing organization shall conduct external penetration testing of a scope sufficient to satisfy the requirements set forth in paragraph (e)(8) of this section.

(i) A derivatives clearing organization shall conduct such external penetration testing at a frequency determined by an appropriate risk analysis, but no less frequently than annually.

(ii) A derivatives clearing organization shall engage independent contractors to conduct the required annual external penetration test. A derivatives clearing organization may conduct other external penetration testing by using employees of the derivatives clearing organization who are not responsible for development or operation of the systems or capabilities being tested.

(4) ***Internal penetration testing.*** A derivatives clearing organization shall conduct internal penetration testing of a scope sufficient to satisfy the requirements set forth in paragraph (e)(8) of this section.

(i) A derivatives clearing organization shall conduct such internal penetration testing at a frequency determined by an appropriate risk analysis, but no less frequently than annually.

(ii) A derivatives clearing organization shall conduct internal penetration testing by engaging independent contractors, or by using employees of the derivatives clearing organization who are not responsible for development or operation of the systems or capabilities being tested.

(5) ***Controls testing.*** A derivatives clearing organization shall conduct controls testing of a scope sufficient to satisfy the requirements set forth in paragraph (e)(8) of this section.

(i) A derivatives clearing organization shall conduct controls testing, which includes testing of each control included in its program of risk analysis and oversight, at a frequency determined by an appropriate risk analysis, but shall test and assess key controls no less frequently than every three years. A derivatives clearing organization may conduct such testing on a rolling basis over the course of the required period.

(ii) A derivatives clearing organization shall engage independent contractors to test and assess the key controls included in the derivatives clearing organization's program of risk analysis and oversight no less frequently than every three years. A derivatives clearing organization may conduct any other controls testing required by this section by using independent contractors or employees of the derivatives clearing organization who are not responsible for development or operation of the systems or capabilities being tested.

(6) ***Security incident response plan testing.*** A derivatives clearing organization shall conduct security incident response plan testing sufficient to satisfy the requirements set forth in paragraph (e)(8) of this section.

(i) The derivatives clearing organization shall conduct such security incident response plan testing at a frequency determined by an appropriate risk analysis, but no less frequently than annually.

(ii) The derivatives clearing organization's security incident response plan shall include, without limitation, the derivatives clearing organization's definition and classification of security incidents, its policies and procedures for reporting security incidents and for internal and external communication and information sharing regarding security incidents, and the hand-off and escalation points in its security incident response process.

(iii) The derivatives clearing organization may coordinate its security incident response plan testing with other testing required by this section or with testing of its other business continuity-disaster recovery and crisis management plans.

(iv) The derivatives clearing organization may conduct security incident response plan testing by engaging independent contractors or by using employees of the derivatives clearing organization.

(7) ***Enterprise technology risk assessment.*** A derivatives clearing organization shall conduct enterprise technology risk assessments of a scope sufficient to satisfy the requirements set forth in paragraph (e)(8) of this section.

(i) A derivatives clearing organization shall conduct an enterprise technology risk assessment at a frequency determined by an appropriate risk analysis, but no less frequently than annually. A derivatives clearing organization that has conducted an enterprise technology risk assessment that complies with this section may conduct subsequent assessments by updating the previous assessment.

(ii) A derivatives clearing organization may conduct enterprise technology risk assessments by using independent contractors or employees of the derivatives clearing organization who are not responsible for development or operation of the systems or capabilities being assessed.

(8) ***Scope of testing and assessment.*** The scope of testing and assessment required by this section shall be broad enough to include the testing of automated systems and controls that a derivatives clearing organization's required program of risk analysis and oversight and its current cybersecurity threat analysis indicate is necessary to identify risks and vulnerabilities that could enable an intruder or unauthorized user or insider to:

(i) Interfere with the derivatives clearing organization's operations or with fulfillment of its statutory and regulatory responsibilities;

(ii) Impair or degrade the reliability, security, or capacity of the derivatives clearing organization's automated systems;

(iii) Add to, delete, modify, exfiltrate, or compromise the integrity of any data related to the derivatives clearing organization's regulated activities; or

(iv) Undertake any other unauthorized action affecting the derivatives clearing organization's regulated activities or the hardware or software used in connection with those activities.

(9) ***Internal reporting and review.*** Both the senior management and the board of directors of the derivatives clearing organization shall receive and review reports setting forth the results of the testing and assessment required by this section. The derivatives clearing organization shall establish and follow appropriate procedures for the remediation of issues identified through such review, as provided in paragraph (e)(10) of this section, and for evaluation of the effectiveness of testing and assessment protocols.

(10) ***Remediation.*** A derivatives clearing organization shall identify and document the vulnerabilities and deficiencies in its systems revealed by the testing and assessment required by this section. The derivatives clearing organization shall conduct and document an appropriate analysis of the risks presented by each vulnerability or deficiency to determine and document whether to remediate the vulnerability or deficiency or accept the associated risk. When a derivatives clearing organization determines to remediate a vulnerability or deficiency, it must remediate in a timely manner given the nature and magnitude of the associated risk.

(f) ***Recordkeeping.*** A derivatives clearing organization shall maintain, and provide to staff of the Division of Clearing and Risk, or any successor division, promptly upon request, pursuant to § 1.31 of this chapter:

(1) Current copies of the derivatives clearing organization's business continuity and disaster recovery plan and other emergency procedures. Such plan and procedures shall be updated at a frequency determined by an appropriate risk analysis, but no less frequently than annually;

(2) All assessments of the derivatives clearing organization's operational risks or system safeguards-related controls;

(3) All reports concerning testing and assessment required by this section, whether conducted by independent contractors or by employees of the derivatives clearing organization; and

(4) All other documents requested by staff of the Division of Clearing and Risk, or any successor division, in connection with Commission oversight of system safeguards pursuant to the Act or Commission regulations, or in connection with Commission maintenance of a current profile of the derivatives clearing organization's automated systems.

(5) Nothing in paragraph (f) of this section shall be interpreted as reducing or limiting in any way a derivatives clearing organization's obligation to comply with § 1.31 of this chapter.

(g) ***Notice of exceptional events.*** A derivatives clearing organization shall notify staff of the Division of Clearing and Risk, or any successor division, promptly of:

(1) Any hardware or software malfunction, security incident, or targeted threat that materially impairs, or creates a significant likelihood of material impairment, of automated system operation, reliability, security, or capacity; or

(2) Any activation of the derivatives clearing organization's business continuity and disaster recovery plan.

(h) ***Notice of planned changes.*** A derivatives clearing organization shall provide staff of the Division of Clearing and Risk, or any successor division, timely advance notice of all material:

(1) Planned changes to the derivatives clearing organization's automated systems that may impact the reliability, security, or capacity of such systems; and

(2) Planned changes to the derivatives clearing organization's program of risk analysis and oversight.

[81 FR 64336, Sept. 19, 2016]

§ 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 a.m. on the next business day, a report containing the results of the backtesting required under § 39.13(g)(7)(i), and the following information related to all positions, other than fully collateralized positions, in accordance with the data fields set forth in appendix C to this part:

(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. The derivatives clearing organization shall identify each individual customer account, using both a legal entity identifier, where available, and any internally-generated identifier, within each customer origin for each clearing member;

(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;

(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

(D) End-of-day positions, including as appropriate the risk sensitivities and valuation data that the derivatives clearing organization generates, creates, or calculates in connection with managing the risks associated with 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, where available, and any internally-generated identifier, 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 each of the following, other than fully collateralized positions:

(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.

(iii) Notwithstanding the specific fields set forth in appendix C to this part, a derivatives clearing organization may choose to submit, after consultation with staff of the Division of Clearing and Risk, any additional data field that is necessary or appropriate to better capture the information that is being reported.

(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 or a change to the entity or person holding a controlling interest in the derivatives clearing organization, whether through an increase in direct ownership or voting interest in the derivatives clearing organization or in a direct or indirect corporate parent entity 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 enters into, terminates, or changes a credit facility funding arrangement, 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 enters into, terminates, or changes a liquidity funding arrangement, or is notified that such arrangement has changed, including but not limited to a change in provider, change in the size of the arrangement, 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 three business days after the derivatives clearing organization enters into a new relationship with, or terminates a relationship with, any settlement bank used by the derivatives clearing organization or approved for use by the derivatives clearing organization's clearing members.

(xv) ***Issues with credit facility funding arrangements, liquidity funding arrangements, custodian banks, or settlement banks.*** A derivatives clearing organization shall report to the Commission no later than one business day after it becomes aware of any material issues or concerns regarding the performance, stability, liquidity, or financial resources of any credit facility funding arrangement, liquidity funding arrangement, custodian bank, or settlement bank used by the derivatives clearing organization or approved for use by the derivatives clearing organization's clearing members.

(xvi) ***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.

(xvii) ***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.

(xviii) ***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.

(xix) ***Change in fiscal year.*** A derivatives clearing organization shall report to the Commission no later than two business days after any change to the start and end dates of its fiscal year.

(xx) ***Change in independent accounting firm.*** A derivatives clearing organization shall report to the Commission no later than 15 days 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.

(xxi) ***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).

(xxii) ***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).

(xxiii) ***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 materially affects the DCO's ability to calculate or collect initial margin or variation margin.

(xxiv) ***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.

(xxv) ***Updates to responses to the Disclosure Framework for Financial Market Infrastructures.*** A systemically important derivatives clearing organization or a subpart C derivatives clearing organization that updates its responses to the Disclosure Framework for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the

Board of the International Organization of Securities Commissions pursuant to § 39.37(b)(1) must provide to the Commission, within ten business days after such update, a copy of the text of the responses that shows all deletions and additions made to the immediately preceding version of the responses, as required by § 39.37(b)(2).

(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.

[76 FR 69430, Nov. 8, 2011, as amended at 85 FR 4858, Jan. 27, 2020; 88 FR 53683, Aug. 8, 2023]

§ 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:

(1) All cleared transactions, including swaps;

(2) All information necessary to record allocation of bunched orders for cleared swaps;

(3) All information required to be created, generated, or reported under this part 39, including but not limited to the results of and methodology used for all tests, reviews, and calculations in connection with setting and evaluating margin levels, determining the value and adequacy of financial resources, and establishing settlement prices;

(4) All rules and procedures required to be submitted pursuant to this part 39 and part 40 of this chapter, including all proposed changes in rules, procedures or operations subject to § 40.10 of this chapter; and

(5) Any data or documentation required by the Commission or by the derivatives clearing organization to be submitted to the derivatives clearing organization by its clearing members, or by any other person in connection with the derivatives clearing organization's clearing and settlement activities.

(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.

[76 FR 69430, Nov. 8, 2011, as amended at 85 FR 4860, Jan. 27, 2020]

§ 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, except that a derivatives clearing organization that clears only fully collateralized positions instead may disclose that it does not employ a margin-setting methodology because it clears only fully collateralized positions;

(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 as promptly as practicable after submission of the report to the Commission under § 39.11(f)(1)(i)(A), except that a derivatives clearing organization that clears only fully collateralized positions instead may disclose that it does not maintain a financial resource package to be used in the event of a clearing member default because it clears only fully collateralized positions;

(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, except that a derivatives clearing organization may omit any clearing member that clears only fully collateralized positions and is not a futures commission merchant;

(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.

[76 FR 69430, Nov. 8, 2011, as amended at 85 FR 4861, Jan. 27, 2020; 88 FR 53684, Aug. 8, 2023]

§ 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.

[85 FR 4861, Jan. 27, 2020]

§ 39.23 Antitrust considerations.

Unless necessary or appropriate to achieve the purposes of the Act, a derivatives clearing organization shall not adopt any rule or take any action that results in any unreasonable restraint of trade, or impose any material anticompetitive burden.

§ 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;

(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;

(11) Establish one or more risk management committees and require the board of directors to consult with, and consider and respond to input from, the risk management committee(s) on all matters that could materially affect the risk profile of the derivatives clearing organization, including any material change to the derivatives clearing organization's margin model, default procedures, participation requirements, and risk monitoring practices, as well as the clearing of new products that could materially affect the risk profile of the derivatives clearing organization. A derivatives clearing organization shall maintain written policies and procedures to make certain that:

(i) The risk management committee consultation process is described in detail, and includes requirements for the derivatives clearing organization to document the board's consideration of and response to risk management committee input and create and maintain minutes of each risk management committee meeting;

(ii) A risk management committee includes at least two clearing member representatives and, if applicable, at least two representatives of customers of clearing members; and

(iii) Membership of a risk management committee is rotated on a regular basis; and

(12) Establish one or more market participant risk advisory working groups as a forum to seek risk-based input from a broad array of market participants, such that a diverse cross-section of the derivatives clearing organization's clearing members and customers of clearing members are represented, regarding all matters that could materially affect the risk profile of the derivatives clearing organization. A derivatives clearing organization shall maintain written policies and procedures related to the formation and role of each risk advisory working group, and include requirements for the derivatives clearing organization to document and provide to the risk management committee, at a minimum, a summary of the topics discussed and the main points raised during each meeting of the risk advisory working group. Each market participant risk advisory working group shall convene at least two times per year.

(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) Members of risk management committee(s);

(v) Any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and

(vi) 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.

(3) A derivatives clearing organization shall maintain policies designed to enable members of risk management committee(s) to provide informed opinions in the form of risk-based input on all matters presented to the risk management committee for consideration, and perform their duties in a manner that supports the safety and efficiency of the derivatives clearing organization and the stability of the broader financial system.

(d) ***Fully collateralized positions.*** A derivatives clearing organization may satisfy the requirements of paragraphs (b)(11), (b)(12), (c)(1)(iv), and (c)(3) of this section by having rules that permit it to clear only fully collateralized positions.

[85 FR 4861, Jan. 27, 2020, as amended at 88 FR 44690, July 13, 2023]

§ 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) Have procedures for identifying, addressing, and managing conflicts of interest involving members of the board of directors.

[85 FR 4862, Jan. 27, 2020, as amended at 88 FR 53684, Aug. 8, 2023]

§ 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.

[85 FR 4862, Jan. 27, 2020]

§ 39.27 Legal risk considerations.

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

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

(1) The derivatives clearing organization to act as a counterparty, including novation;

(2) Netting arrangements;

(3) The derivatives clearing organization's interest in collateral;

(4) The steps that a derivatives clearing organization would take to address a default of a clearing member, including but not limited to, the unimpeded ability to liquidate collateral and close out or transfer positions in a timely manner;

(5) Finality of settlement and funds transfers that are irrevocable and unconditional when effected (no later than when a derivatives clearing organization's accounts are debited and credited); and

(6) Other significant aspects of the derivatives clearing organization's operations, risk management procedures, and related requirements.

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

(1) The derivatives clearing organization shall identify and address any material conflict of law issues. The derivatives clearing organization's contractual agreements shall specify a choice of law.

(2) The derivatives clearing organization shall be able to demonstrate the enforceability of its choice of law in relevant jurisdictions and that its rules, procedures, and contracts are enforceable in all relevant jurisdictions.

(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.

[76 FR 69430, Nov. 8, 2011, as amended at 85 FR 4862, Jan. 27, 2020]

§§ 39.28-39.29 [Reserved]

Subpart C—Provisions Applicable to Systemically Important Derivatives Clearing Organizations and Derivatives Clearing Organizations That Elect To Be Subject to the Provisions of This Subpart

Source: 78 FR 72514, Dec. 2, 2013, unless otherwise noted.

§ 39.30 Scope.

(a) The provisions of this subpart apply to each of the following: a subpart C derivatives clearing organization, a systemically important derivatives clearing organization, and any derivatives clearing organization, as defined under section 1a(15) of the Act and § 1.3 of this chapter, seeking to become a subpart C derivatives clearing organization pursuant to § 39.31.

(b) A systemically important derivatives clearing organization is subject to the provisions of subparts A and B of this part in addition to the provisions of this subpart.

(c) A subpart C derivatives clearing organization is subject to the provisions of subparts A and B of this part in addition to the provisions of this subpart except for §§ 39.41 and 39.42.

[78 FR 72514, Dec. 2, 2013, as amended at 83 FR 7996, Feb. 23, 2018]

§ 39.31 Election to become subject to the provisions of this subpart.

(a) ***Election eligibility.***

(1) A derivatives clearing organization that is registered with the Commission and that is not a systemically important derivatives clearing organization may elect to become a subpart C derivatives clearing organization subject to the provisions of this subpart, using the procedures set forth in paragraph (b) of this section.

(2) An applicant for registration as a derivatives clearing organization pursuant to § 39.3 may elect to become a subpart C derivatives clearing organization subject to the provisions of this subpart as part of its application for registration using the procedures set forth in paragraph (c) of this section.

(b) ***Election and withdrawal procedures applicable to registered derivatives clearing organizations*** —

(1) ***Election.*** A derivatives clearing organization that is registered with the Commission and that is not a systemically important derivatives clearing organization may request that the Commission accept its election to become a subpart C derivatives clearing organization by filing with the Commission a completed Subpart C Election Form. The Subpart C Election Form shall include the election and all certifications, disclosures and exhibits, as provided in appendix B to this part and any amendments or supplements thereto filed with the Commission pursuant to paragraphs (b)(2) and (3) of this section.

(2) ***Submission of supplemental information.*** The filing of a Subpart C Election Form does not create a presumption that the Subpart C Election Form is materially complete or that supplemental information will not be required. The Commission, at any time prior to the effective date, as provided in paragraph (b)(4) of this section, may request that the derivatives clearing organization submit supplemental information in order for the Commission to process the Subpart C Election Form, and the derivatives clearing organization shall file such supplemental information with the Commission.

(3) ***Amendments.*** A derivatives clearing organization shall 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.

(4) ***Effective date.*** A derivatives clearing organization's election to become a subpart C derivatives clearing organization shall become effective:

(i) Upon the later of the following, provided the Commission has neither stayed nor denied such election as set forth in paragraph (b)(5) of this section.

(A) The effective date specified by the derivatives clearing organization in its Subpart C Election Form; or

(B) Ten business days after the derivatives clearing organization files its Subpart C Election Form with the Commission;

(ii) Or upon the effective date set forth in written notification from the Commission that it shall permit the election to take effect after a stay issued pursuant to paragraph (b)(5) of this section.

(5) ***Stay or denial of election.*** Prior to the effective date set forth in paragraph (b)(4)(i) of this section, the Commission may stay or deny a derivatives clearing organization's election to become a subpart C derivatives clearing organization by issuing a written notification thereof to the derivatives clearing organization.

(6) ***Commission acknowledgement.*** The Commission may acknowledge, in writing, that it has received a Subpart C Election Form filed by a derivatives clearing organization and that it has permitted the derivatives clearing organization's election to become subject to the provisions of this subpart to take effect, and the effective date of such election.

(7) ***Withdrawal of election.*** A derivatives clearing organization that has filed a Subpart C Election Form may withdraw an election to become subject to the provisions of this subpart at any time prior to the date that the election is permitted to take effect by filing with the Commission a notice of the withdrawal of election.

(c) ***Election and withdrawal procedures applicable to applicants for registration as derivatives clearing organization*** —

(1) ***Election.*** An applicant for registration as a derivatives clearing organization that requests an election to become subject to the provisions of this subpart may make that request by attaching a completed Subpart C Election Form to the Form DCO that it files pursuant to § 39.3. The Subpart C Election Form shall include the election and all certifications, disclosures and exhibits, as provided in appendix B of this part, and any amendments or supplements thereto filed with the Commission pursuant to paragraphs (c)(3) or (4) of this section.

(2) ***Election review and effective date.*** The Commission shall review the applicant's Subpart C Election Form as part of the Commission's review of its application for registration pursuant to § 39.3(a). The Commission may permit the applicant's election to take effect at the time it approves the applicant's application for registration by providing written notice thereof to the applicant. The Commission shall not approve any application for registration filed pursuant to § 39.3(a) for which a Subpart C

Election Form is pending, if the Commission determines that the applicant's election to become subject to this subpart should not become effective because the applicant has not demonstrated its ability to comply with the applicable provisions of this subpart.

(3) ***Submission of supplemental information.*** The filing of a Subpart C Election Form does not create a presumption that the Subpart C Election Form is materially complete or that supplemental information will not be required. At any time during the Commission's review of the Subpart C Election Form, the Commission may request that the applicant submit supplemental information in order for the Commission to process the Subpart C Election Form and the applicant shall file such supplemental information with the Commission.

(4) ***Amendments.*** An applicant for registration as a derivatives clearing organization shall 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.

(5) ***Withdrawal of election.*** An applicant for registration as a derivatives clearing organization may withdraw an election to become subject to the provisions of this subpart by filing with the Commission a notice of the withdrawal of its Subpart C Election Form at any time prior to the date that the Commission approves its application for registration as a derivatives clearing organization. The applicant may withdraw its Subpart C Election Form without withdrawing its Form DCO.

(d) ***Public information.*** The following portions of the Subpart C Election Form will be public: The Elections and Certifications and Disclosures in the Subpart C Election Form, the rules of the derivatives clearing organization, the regulatory compliance chart, and any other portion of the Subpart C Election Form not covered by a request for confidential treatment complying with the requirements of § 145.9 of this chapter.

(e) ***Rescission of election.***

(1) ***Notice of intent to rescind.*** A subpart C derivatives clearing organization may rescind its election to be subject to the provisions of this subpart and terminate its status as a subpart C derivatives clearing organization by filing with the Commission a notice of its intent to rescind such election. The notice of intent to rescind the election shall include:

(i) The effective date of the rescission; and

(ii) A certification signed by the relevant duly authorized representative of the subpart C derivatives clearing organization, as specified in paragraph three of the General Instructions to the Subpart C Election Form, stating that the subpart C derivatives clearing organization:

(A) Has provided the notice to its clearing members required by paragraph (e)(3)(i)(A) of this section;

(B) Will provide the notice to its clearing members required by paragraph (e)(3)(i)(B) of this section;

(C) Has provided the notice to the general public required by paragraph (e)(3)(ii)(A) of this section;

(D) Will provide notice to the general public required by paragraph (e)(3)(ii)(B) of this section; and

(E) Has removed all references to the organization as a subpart C derivatives clearing organization and a qualifying central counterparty on its Web site and in all other material that it provides to its clearing members and customers, other market participants or members of the public, as required by paragraph (e)(3)(ii)(C) of this section.

(2) ***Effective date.*** The rescission of the election to be subject to the provisions of this subpart shall become effective on the date set forth in the notice of intent to rescind the election filed by the subpart C derivatives clearing organization pursuant to paragraph (e)(1) of this section, provided that the rescission may become effective no earlier than 180 days after the notice of intent to rescind the election is filed with the Commission. The subpart C derivatives clearing organization shall continue to comply with all of the provisions of this subpart until such effective date.

(3) ***Additional notice requirements.***

(i) A subpart C derivatives clearing organization shall provide the following notices, at the following times, to each of its clearing members and shall have rules in place requiring each of its clearing members to provide the following notices to each of the clearing member's customers:

(A) No later than the filing of a notice of its intent to rescind its election to be subject to the provisions of this subpart, written notice that it intends to file such notice with the Commission and the effective date thereof; and

(B) On the effective date of the rescission of its election to be subject to the provisions of this subpart, written notice that the rescission has become effective.

(ii) A subpart C derivatives clearing organization shall:

(A) No later than the filing of a notice of its intent to rescind its election to be subject to the provisions of this subpart, provide notice to the general public, displayed prominently on its Web site, of its intent to rescind its election to be subject to the provisions of this subpart;

(B) On and after the effective date of the rescission of its election to be subject to the provisions of this subpart, provide notice to the general public, displayed prominently on its Web site, that the rescission has become effective; and

(C) Prior to the filing of a notice of its intent to rescind its election to become subject to the provisions of this subpart, remove all references to the derivatives clearing organization's status as a subpart C derivatives clearing organization and a qualifying central counterparty on its Web site and in all other materials that it provides to its clearing members and customers, other market participants, or the general public.

(iii) The employees and representatives of a derivatives clearing organization that has filed a notice of its intent to rescind its election to be subject to the provisions of this subpart shall refrain from referring to the organization as a subpart C derivatives clearing organization and a qualifying central counterparty on and after the date that the notice of intent to rescind the election is filed.

(4) ***Effect of rescission.*** The rescission of a subpart C derivatives clearing organization's election to be subject to the provisions of this subpart shall not affect the authority of the Commission concerning any activities or events occurring during the time that the derivatives clearing organization maintained its status as a subpart C derivatives clearing organization.

(f) ***Loss of designation as a systemically important derivatives clearing organization.*** A systemically important derivatives clearing organization whose designation of systemic importance is rescinded by the Financial Stability Oversight Council, shall immediately be deemed to be a subpart C derivatives clearing organization and shall continue to comply with the provisions of this subpart unless such derivatives clearing organization elects to rescind its status as a subpart C derivatives clearing organization in accordance with the requirements of paragraph (e) of this section.

(g) All forms and notices required by this section shall be filed electronically with the Secretary of the Commission in the format and manner specified by the Commission.

§ 39.32 [Reserved]

§ 39.33 Financial resources requirements for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

(a) ***General rule.***

(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.

(2) The Commission shall, if it deems appropriate, determine whether a systemically important derivatives clearing organization or subpart C derivatives clearing organization is systemically important in multiple jurisdictions. In determining whether a systemically important derivatives clearing organization or subpart C derivatives clearing organization is systemically important in multiple jurisdictions, the Commission shall consider whether the derivatives clearing organization:

(i) Is a systemically important derivatives clearing organization, as defined by § 39.2; or

(ii) Has been determined to be systemically important by one or more jurisdictions other than the United States pursuant to a designation process that considers whether the foreseeable effects of a failure or disruption of the derivatives clearing organization could threaten the stability of each relevant jurisdiction's financial system.

(3) The Commission shall, if it deems appropriate, determine whether any of the activities of a systemically important derivatives clearing organization or a subpart C derivatives clearing organization, in addition to clearing credit default swaps, credit default futures, and any derivatives that reference either credit default swaps or credit default futures, has a more complex risk profile. In determining whether an activity has a more complex risk profile, the Commission will consider characteristics such as discrete jump-to-default price changes or high correlations with potential participant defaults as factors supporting (though not necessary for) a finding of a more complex risk profile.

(4) For purposes of this section, if a clearing member controls another clearing member or is under common control with another clearing member, such affiliated clearing members shall be deemed to be a single clearing member.

(b) ***Valuation of financial resources.*** Notwithstanding the provisions of § 39.11(d)(2), assessments for additional guaranty fund contributions (*i.e.,* guaranty fund contributions that are not pre-funded) shall not be included in calculating the financial resources available to meet a systemically important derivatives clearing organization's or subpart C derivatives clearing organization's obligations under paragraph (a) of this section or § 39.11(a)(1).

(c) ***Liquidity resources*** —

(1) ***Minimum amount of liquidity resources.***

(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.

(ii) A systemically important derivatives clearing organization and subpart C derivatives clearing organization that is subject to § 39.33(a)(1) shall *consider* maintaining eligible liquidity resources 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 of the two clearing members 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.

(2) ***Satisfaction of settlement in all relevant currencies.*** Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall maintain liquidity resources that are sufficient to satisfy the obligations required by paragraph (c)(1) of this section in all relevant currencies for which the systemically important derivatives clearing organization or subpart C derivatives clearing organization has obligations to perform settlements, as defined in § 39.14(a)(1), to its clearing members.

(3) ***Qualifying liquidity resources.***

(i) Only the following liquidity resources are eligible for the purpose of meeting the requirement of paragraph (c)(1) of this section:

(A) Cash in the currency of the requisite obligations, held either at the central bank of issue or at a creditworthy commercial bank;

(B) Committed lines of credit;

(C) Committed foreign exchange swaps;

(D) Committed repurchase agreements; or

(E)

(*1*) Highly marketable collateral, including high quality, liquid, general obligations of a sovereign nation.

(2) The assets described in paragraph (c)(3)(i)(E)(*1*) of this section must be readily available and convertible into cash pursuant to prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions.

(ii) With respect to the arrangements described in paragraph (c)(3)(i) of this section, the systemically important derivatives clearing organization or subpart C derivatives clearing organization must take appropriate steps to verify that such arrangements do not include material adverse change conditions and are enforceable, and will be highly reliable, in extreme but plausible market conditions.

(4) ***Additional liquidity resources.*** If a systemically important derivatives clearing organization or subpart C derivatives clearing organization maintains financial resources in addition to those required to satisfy paragraph (c)(1) of this section, then those resources should be in the form of assets that are likely to be saleable with proceeds available promptly or acceptable as collateral for lines of credit, swaps, or repurchase agreements on an *ad hoc* basis. A systemically important derivatives clearing organization or subpart C derivatives clearing organization should consider maintaining collateral with low credit, liquidity, and market risks that is typically accepted by a central bank of issue for any currency in which it may have settlement obligations, but shall not assume the availability of emergency central bank credit as a part of its liquidity plan.

(d) ***Liquidity providers.***

(1) For the purposes of this paragraph, a liquidity provider means:

(i) A depository institution, a U.S. branch or agency of a foreign banking organization, a trust company, or a syndicate of depository institutions, U.S. branches or agencies of foreign banking organizations, or trust companies providing a line of credit, foreign exchange swap facility or repurchase facility to a systemically important derivatives clearing organization or subpart C derivatives clearing organization;

(ii) Any other counterparty relied upon by a systemically important derivatives clearing organization or subpart C derivatives clearing organization to meet its minimum liquidity resources requirement under paragraph (c) of this section.

(2) In fulfilling its obligations under paragraph (c) of this section, each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall undertake due diligence to confirm that each of its liquidity providers, whether or not such liquidity provider is a clearing member, has:

(i) Sufficient information to understand and manage the liquidity provider's liquidity risks; and

(ii) The capacity to perform as required under its commitments to provide liquidity to the systemically important derivatives clearing organization or subpart C derivatives clearing organization.

(3) Where relevant to a liquidity provider's ability reliably to perform its commitments with respect to a particular currency, the systemically important derivatives clearing organization or subpart C derivatives clearing organization may take into account the liquidity provider's access to the central bank of issue of that currency.

(4) Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall regularly test its procedures for accessing its liquidity resources under paragraph (c)(3)(i) of this section, including testing its arrangements under paragraph (c)(3)(ii) and its relevant liquidity provider(s) under paragraph (d)(1) of this section.

(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.

(e) ***Documentation of financial resources and liquidity resources.*** Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall document its supporting rationale for, and have appropriate governance arrangements relating to, the amount of total financial resources it maintains pursuant to paragraph (a) of this section and the amount of total liquidity resources it maintains pursuant to paragraph (c) of this section.

[76 FR 69430, Nov. 8, 2011, as amended at 85 FR 4862, Jan. 27, 2020]

§ 39.34 System safeguards for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

(a) Notwithstanding § 39.18(c)(2), the business continuity and disaster recovery plan described in § 39.18(c)(1) for each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall have the objective of enabling, and the physical, technological, and personnel resources described in § 39.18(c)(1) shall be sufficient to enable, the systemically important derivatives clearing organization or subpart C 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) To facilitate its ability to achieve the recovery time objective specified in paragraph (a) of this section in the event of a wide-scale disruption, each systemically important derivatives clearing organization and subpart C derivatives clearing organization must maintain a degree of geographic dispersal of physical, technological and personnel resources consistent with the following for each activity necessary for the daily processing, clearing, and settlement of existing and new contracts:

(1) Physical and technological resources (including a secondary site), sufficient to enable the entity to meet the recovery time objective after interruption of normal clearing by a wide-scale disruption, must be located outside the relevant area of the physical and technological resources the systemically important derivatives clearing organization or subpart C derivatives clearing organization normally relies upon to conduct that activity, and must not rely on the same critical transportation, telecommunications, power, water, or other critical infrastructure components the entity normally relies upon for such activities;

(2) Personnel, who live and work outside that relevant area, sufficient to enable the entity to meet the recovery time objective after interruption of normal clearing by a wide-scale disruption affecting the relevant area in which the personnel the entity normally relies upon to engage in such activities are located;

(3) The provisions of § 39.18(d) shall apply to these resource requirements.

(c) Each systemically important derivatives clearing organization and subpart C derivatives clearing organization must conduct 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. The provisions of § 39.18(e) shall apply to such testing.

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

[78 FR 72514, Dec. 2, 2013, as amended at 81 FR 64339, Sept. 19, 2016]

§ 39.35 Default rules and procedures for uncovered credit losses or liquidity shortfalls (recovery) for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

(a) ***Allocation of uncovered credit losses.*** Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall adopt explicit rules and procedures that address fully any loss arising from any individual or combined default relating to any clearing members' obligations to the systemically important derivatives clearing organization or subpart C derivatives clearing organization. Such rules and procedures shall address how the systemically important derivatives clearing organization or subpart C derivatives clearing organization would:

(1) Allocate losses exceeding the financial resources available to the systemically important derivatives clearing organization or subpart C derivatives clearing organization;

(2) Repay any funds it may borrow; and

(3) Replenish any financial resources it may employ during such a stress event, so that the systemically important derivatives clearing organization or subpart C derivatives clearing organization can continue to operate in a safe and sound manner.

(b) ***Allocation of uncovered liquidity shortfalls.***

(1) Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall establish rules and/or procedures that enable it promptly to meet all of its settlement obligations, on a same day and, as appropriate, intraday and multiday basis, in the context of the occurrence of either or both of the following scenarios:

(i) An individual or combined default involving one or more clearing members' obligations to the systemically important derivatives clearing organization or subpart C derivatives clearing organization; or

(ii) A liquidity shortfall exceeding the financial resources of the systemically important derivatives clearing organization or subpart C derivatives clearing organization.

(2) The rules and procedures described in paragraph (b)(1) of this section shall:

(i) Enable the systemically important derivatives clearing organization or subpart C derivatives clearing organization promptly to meet its payment obligations in all relevant currencies;

(ii) Be designed to enable the systemically important derivatives clearing organization or subpart C derivatives clearing organization to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations; and

(iii) Address the systemically important derivatives clearing organization's or subpart C derivatives clearing organization's process to replenish any liquidity resources it may employ during a stress event so that it can continue to operate in a safe and sound manner.

§ 39.36 Risk management for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

(a) ***Stress tests of financial resources.*** In addition to conducting stress tests pursuant to § 39.13(h)(3), each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall conduct stress tests of its financial resources in accordance with the following standards and practices:

(1) Perform, on a daily basis, stress testing of its financial resources using predetermined parameters and assumptions;

(2) Perform comprehensive analyses of stress testing scenarios and underlying parameters to ascertain their appropriateness for determining the systemically important derivatives clearing organization's or subpart C derivatives clearing organization's required level of financial resources in current and evolving market conditions;

(3) Perform the analyses required by paragraph (a)(2) of this section at least monthly and when products cleared or markets served display high volatility or become less liquid, when the size or concentration of positions held by clearing members increases significantly, or as otherwise appropriate, evaluate the stress testing scenarios, models, and underlying parameters more frequently than once a month;

(4) For the analyses required by paragraphs (a)(1) and (2) of this section, include a range of relevant stress scenarios, in terms of both defaulting clearing members' positions and possible price changes in liquidation periods. The scenarios considered shall include, but are not limited to, the following:

(i) Relevant peak historic price volatilities;

(ii) Shifts in other market factors including, as appropriate, price determinants and yield curves;

(iii) Multiple defaults over various time horizons;

(iv) Simultaneous pressures in funding and asset markets; and

(v) A range of forward-looking stress scenarios in a variety of extreme but plausible market conditions.

(5) Establish procedures for:

(i) Reporting stress test results to its risk management committee or board of directors, as applicable; and

(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) ***Sensitivity analysis of margin model.***

(1) Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall, at least monthly and more frequently as appropriate, conduct a sensitivity analysis of its margin models to analyze and monitor model performance and overall margin coverage. Sensitivity analysis shall be conducted on both actual and hypothetical positions.

(2) For the purposes of this paragraph (b), a sensitivity analysis of a margin model includes:

(i) Reviewing a wide range of parameter settings and assumptions that reflect possible market conditions in order to understand how the level of margin coverage might be affected by highly stressed market conditions. The range of parameters and assumptions should capture a variety of historical and hypothetical conditions, including the most volatile periods that have been experienced by the markets served by the systemically important derivatives clearing organization or subpart C derivatives clearing organization and extreme changes in the correlations between prices. The parameters and assumptions should be appropriate in light of the specific characteristics, considered on a current basis, of particular products and portfolios cleared.

(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.

(iii) Evaluating potential losses in clearing members' proprietary positions and, where appropriate, customer positions.

(3) A systemically important derivatives clearing organization or subpart C derivatives clearing organization involved in activities with a more complex risk profile shall take into consideration parameter settings that reflect the potential impact of the simultaneous default of clearing members and, where applicable, the underlying credit instruments.

(c) ***Stress tests of liquidity resources.*** Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall conduct stress tests of its liquidity resources in accordance with the following standards and practices:

(1) Perform, on a daily basis, stress testing of its liquidity resources using predetermined parameters and assumptions;

(2) Perform comprehensive analyses of stress testing scenarios and underlying parameters to ascertain their appropriateness for determining the systemically important derivatives clearing organization's or subpart C derivatives clearing organization's required level of liquidity resources in current and evolving market conditions;

(3) Perform the analyses required by paragraph (c)(2) of this section at least monthly and when products cleared or markets served display high volatility or become less liquid, when the size or concentration of positions held by clearing members increases significantly, or as otherwise appropriate, evaluate its stress testing scenarios, models, and underlying parameters more frequently than once a month;

(4) For the analyses required by paragraphs (c)(1) and (2) of this section, include a range of relevant stress scenarios, in terms of both defaulting clearing members' positions and possible price changes in liquidation periods. The scenarios considered shall include, but are not limited to, the following:

(i) Relevant peak historic price volatilities;

(ii) Shifts in other market factors including, as appropriate, price determinants and yield curves;

(iii) Multiple defaults over various time horizons;

(iv) Simultaneous pressures in funding and asset markets; and

(v) A range of forward-looking stress scenarios in a variety of extreme but plausible market conditions.

(5) For the scenarios enumerated in paragraph (c)(4) of this section, consider the following:

(i) All entities that might pose material liquidity risks to the systemically important derivatives clearing organization or subpart C derivatives clearing organization, including settlement banks, permitted depositories, liquidity providers, and other entities,

(ii) Multiday scenarios as appropriate,

(iii) Inter-linkages between its clearing members and the multiple roles that they may play in the systemically important derivatives clearing organization's or subpart C derivatives clearing organization's risk management; and

(iv) The probability of multiple failures and contagion effect among clearing members.

(6) Establish procedures for:

(i) Reporting stress test results to its risk management committee or board of directors, as applicable; and

(ii) Using the results to assess the adequacy of, and to adjust its total amount of liquidity resources.

(7) Use the results of stress tests to support compliance with the liquidity resources requirement set forth in § 39.33(c).

(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.

(f) ***Custody and investment risk.*** Custody and investment arrangements of a systemically important derivatives clearing organization's and subpart C derivatives clearing organization's own funds and assets shall be subject to the same requirements as those specified in § 39.15 for the funds and assets of clearing members, and shall 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.

(g) ***Settlement banks.*** Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall:

(1) Monitor, manage, and limit its credit and liquidity risks arising from its settlement banks;

(2) Establish, and monitor 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

(3) Monitor and manage the concentration of credit and liquidity exposures to its settlement banks.

[76 FR 69430, Nov. 8, 2011, as amended at 85 FR 4862, Jan. 27, 2020]

§ 39.37 Additional disclosure for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

In addition to the requirements of § 39.21, each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall:

(a) Complete and publicly disclose its responses to the Disclosure Framework for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the Board of the International Organization of Securities Commissions;

(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) Publicly disclose 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;

(d) Publicly disclose rules, policies, and procedures concerning segregation and portability of customers' positions and funds, including whether each of:

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

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

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

(i) Protected on an individual or omnibus basis or

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

[78 FR 72514, Dec. 2, 2013, as amended at 83 FR 7996, Feb. 23, 2018; 85 FR 4862, Jan. 27, 2020; 88 FR 53684, Aug. 8, 2023]

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

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

(1) Clearing and settlement arrangements;

(2) Operating structure and procedures;

(3) Scope of products cleared; and

(4) Use of technology.

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

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

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

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

(a) ***Definitions.*** For purposes of this section:

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

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

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

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

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

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

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

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

(c)

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

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

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

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

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

(3) Resources counted in meeting the requirements of §§ 39.11(a)(1) and 39.33 may not be allocated, in whole or in part, to the recovery plans required by paragraph (b)(2) of this section. Other resources may be allocated, in whole or in part, to the recovery plans required by either paragraphs (b)(1) or (2) of this section, but not both paragraphs, and only to the extent the use of such resources is not

otherwise limited by the Act, Commission regulations, the systemically important derivatives clearing organization's or subpart C derivatives clearing organization's rules, or any contractual arrangements to which the systemically important derivatives clearing organization or subpart C derivatives clearing organization is a party.

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

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

[76 FR 69430, Nov. 8, 2011, as amended at 85 FR 4862, Jan. 27, 2020]

§ 39.40 Consistency with the Principles for Financial Market Infrastructures.

This subpart C is intended to establish standards which, together with subparts A and B of this part, are consistent with section 5b(c) of the Act and the Principles for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the Board of the International Organization of Securities Commissions and should be interpreted in that context.

§ 39.41 Special enforcement authority for systemically important derivatives clearing organizations.

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

§ 39.42 Advance notice of material risk-related rule changes by systemically important derivatives clearing organizations.

A systemically important derivatives clearing organization shall provide notice to the Commission in advance of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the systemically important derivatives clearing organization, in accordance with the requirements of § 40.10 of this chapter.

§§ 39.43-39.49 [Reserved]

Subpart D—Provisions Applicable to Derivatives Clearing Organizations Subject to Compliance with Core Principles Through Compliance with Home Country Regulatory Regime

Source: 85 FR 67187, Oct. 21, 2020, unless otherwise noted.

§ 39.50 Scope.

The provisions of this subpart D apply to any derivatives clearing organization that is registered through the process described in § 39.3(a)(3) of this part or as otherwise provided by order of the Commission.

§ 39.51 Compliance with the core principles through compliance with home country regulatory regime.

(a) ***Eligibility.***

(1) A derivatives clearing organization shall be eligible for registration for the clearing of swaps subject to compliance with this subpart if:

(i) The Commission determines that compliance by the derivatives clearing organization with its home country regulatory regime constitutes compliance with the core principles set forth in section 5b(c)(2) of the Act;

(ii) The derivatives clearing organization is in good regulatory standing in its home country;

(iii) The Commission determines the derivatives clearing organization does not pose substantial risk to the U.S. financial system; and

(iv) A memorandum of understanding or similar arrangement satisfactory to the Commission is in effect between the Commission and the derivatives clearing organization's home country regulator, pursuant to which, among other things, the home country regulator agrees to provide to the Commission any information that the Commission deems appropriate to evaluate the initial and continued eligibility of the derivatives clearing organization for registration or to review its compliance with any conditions of such registration.

(2) To the extent that the derivatives clearing organization's home country regulatory regime lacks legal requirements that correspond to those core principles less related to risk, the Commission may, in its discretion, grant registration subject to conditions that would address the relevant core principles.

(b) ***Conditions.*** A derivatives clearing organization subject to compliance with this subpart shall be subject to any conditions the Commission may prescribe including, but not limited to:

(1) ***Applicable requirements under the Act and Commission regulations.*** The derivatives clearing organization shall comply with: The core principles set forth in section 5b(c)(2) of the Act through its compliance with applicable legal requirements in its home country; and other requirements applicable to derivatives clearing organizations as specified in the derivatives clearing organization's registration order including, but not limited to, section 4d(f) of the Act, parts 1, 22, and 45 of this chapter, subpart A of this part and § 39.15.

(2) ***Open access.*** The derivatives clearing organization shall have rules with respect to swaps to which one or more of the counterparties is a U.S. person that:

(i) Provide that all swaps with the same terms and conditions, as defined by product specifications established under the derivatives clearing organization's 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, to the extent offsetting is permitted by the derivatives clearing organization's rules; and

(ii) Provide that there shall be non-discriminatory clearing of a swap executed bilaterally or on or subject to the rules of an unaffiliated electronic matching platform or trade execution facility.

(3) ***Consent to jurisdiction; designation of agent for service of process.*** The derivatives clearing organization shall:

(i) Consent to jurisdiction in the United States;

(ii) Designate, authorize, and identify to the Commission, an agent in the United States who shall accept any notice or service of process, pleadings, or other documents, including any summons, complaint, order, subpoena, request for information, or any other written or electronic documentation or correspondence issued by or on behalf of the Commission or the United States Department of Justice to the derivatives clearing organization, in connection with any actions or proceedings brought against, or investigations relating to, the derivatives clearing organization or any of its U.S. clearing members; and

(iii) Promptly inform the Commission of any change in its designated and authorized agent.

(4) ***Compliance.*** The derivatives clearing organization shall comply, and shall demonstrate compliance as requested by the Commission, with any condition of its registration.

(5) ***Inspection of books and records.*** The derivatives clearing organization shall make all documents, books, records, reports, and other information related to its operation as a derivatives clearing organization open to inspection and copying by any representative of the Commission; and in response to a request by any representative of the Commission, the derivatives clearing organization shall, promptly and in the form specified, make the requested books and records available and provide them directly to Commission representatives.

(6) ***Representation of good regulatory standing.*** On an annual basis, within 60 days following the end of its fiscal year, a derivatives clearing organization shall request and the Commission must receive from a home country regulator a written representation that the derivatives clearing organization is in good regulatory standing.

(7) ***Other conditions.*** The Commission may condition compliance with this subpart on any other facts and circumstances it deems relevant.

(c) ***General reporting requirements.***

(1) A derivatives clearing organization shall provide to the Commission the information specified in this paragraph and any other information that the Commission deems necessary, including, but not limited to, information for the purpose of the Commission evaluating the continued eligibility of the derivatives clearing organization for compliance with this subpart, reviewing compliance by the derivatives clearing organization with any conditions of its registration, or conducting oversight of U.S. clearing members, and the swaps that are cleared by such persons through the derivatives clearing organization. Information provided to the Commission under this paragraph shall be submitted in accordance with § 39.19(b).

(2) Each derivatives clearing organization shall provide to the Commission the following information:

(i) A report compiled as of the end of each trading day and submitted to the Commission by 10 a.m. U.S. central time on the following business day, containing with respect to swaps:

(A) Total initial margin requirements for all clearing members;

(B) Initial margin requirements and initial margin on deposit for each U.S. clearing member, by house origin and by each customer origin, and by each individual customer account; and

(C) Daily variation margin, separately listing the mark-to-market amount collected from or paid to each U.S. clearing member, by house origin and by each customer origin, and by each individual customer account.

(ii) A report compiled as of the last day of each fiscal quarter of the derivatives clearing organization and submitted to the Commission no later than 17 business days after the end of the derivatives clearing organization's fiscal quarter, containing a list of U.S. clearing members, with respect to the clearing of swaps, as of the last day of the fiscal quarter.

(iii) Prompt notice regarding any change in the home country regulatory regime;

(iv) As available to the derivatives clearing organization, any examination report or examination findings by a home country regulator, and notify the Commission within five business days after it becomes aware of the commencement of any enforcement or disciplinary action or investigation by a home country regulator;

(v) Immediate notice of any change with respect to the derivatives clearing organization's licensure, registration, or other authorization to act as a derivatives clearing organization in its home country;

(vi) In the event of a default by a clearing member, with such event of default determined in accordance with the rules of the derivatives clearing organization, immediate notice of the default including the amount of the clearing member's financial obligation; *provided, however,* if the defaulting clearing member is a U.S. clearing member, the notice shall also include the name of the U.S. clearing member and a list of the positions held by the U.S. clearing member; and

(vii) Notice of action taken against a U.S. clearing member by a derivatives clearing organization, no later than two business days after the derivatives clearing organization takes such action against a U.S. clearing member.

(d) ***Modification of registration upon Commission initiative.***

(1) The Commission may, in its discretion and upon its own initiative, modify the terms and conditions of an order of registration subject to compliance with this subpart if the Commission determines that there are changes to or omissions in facts or circumstances pursuant to which the order was issued, or that any of the terms and conditions of its order have not been met, including, but not limited to, the requirement that:

(i) Compliance with the derivatives clearing organization's home country regulatory regime satisfies the core principles set forth in section 5b(c)(2) of the Act;

(ii) The derivatives clearing organization is in good regulatory standing in its home country; or

(iii) The derivatives clearing organization does not pose substantial risk to the U.S. financial system.

(2) The Commission shall provide written notification to a derivatives clearing organization that it is considering whether to modify an order of registration pursuant to this paragraph and the basis for that consideration.

(3) The derivatives clearing organization may respond to the notification in writing no later than 30 business days following receipt of the notification, or at such later time as the Commission permits in writing.

(4) Following receipt of a response from the derivatives clearing organization, or after expiration of the time permitted for a response, the Commission may:

(i) Issue an order requiring the derivatives clearing organization to comply with all requirements applicable to derivatives clearing organizations in the Act and this chapter, effective as of a date to be specified therein. The specified date shall be intended to provide the derivatives clearing organization with a reasonable amount of time to come into compliance with the Act and Commission regulations or request a vacation of registration in accordance with § 39.3(f);

(ii) Issue an amended order of registration that modifies the terms and conditions of the order; or

(iii) Provide written notification to the derivatives clearing organization that the order of registration will remain in effect without modification to its terms and conditions.

Appendix A to Part 39—Form DCO Derivatives Clearing Organization Application for Registration

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

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

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;

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

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 [illegible] 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(e)(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 _____ 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

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 of the 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.

[85 FR 4863, Jan. 27, 2020]

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 [illegible] 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

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).

[85 FR 4891, Jan. 27, 2020]

Appendix C to Part 39—Daily Reporting Data Fields

A. Daily Cash Flow Reporting

Field name	Description	House & customer origin	Individual customer account
COMMON FIELDS (DAILY CASH FLOW REPORTING)			
Total Message Count	The total number of reports included in the file	M	M
FIXML Message Type	Financial Information eXchange Markup Language (FIXML) account summary report type	M	M
Sender ID	The CFTC-issued derivatives clearing organization (DCO) identifier	M	M
To ID	Indicate “CFTC”	M	M
Message Transmit Datetime	The date and time the file is transmitted	M	M
Report ID	A unique identifier assigned by the Commodity Futures Trading Commission (CFTC) to each clearing member report	M	M
Report Date	The business date of the information being reported	M	M
Base Currency	Base currency referenced throughout report; provide exchange rate against this currency	M	M
Report Time (Message Create Time)	The report “as of” or information cut-off time	M	M
DCO Identifier	CFTC-assigned identifier for a DCO	M	M
Clearing Participant Identifier	DCO-assigned identifier for a particular clearing member	M	M
Clearing Participant Name	The name of the clearing member	M	M
Fund Segregation Type	Clearing fund segregation type	M	M
Clearing	Legal entity identifier (LEI) for a particular clearing member	C	C

M = mandatory C = conditional O = optional.

Field name	Description	House & customer origin	Individual customer account
Participant LEI	per International Organization for Standardization (ISO) 17442		
Clearing Participant LEI Name	The LEI name associated with the clearing member LEI	C	C
Customer Position Identifier	Proprietary identifier for a particular customer position account	C	N/A
Customer Position Name	The name associated with the customer position identifier	M	N/A
Customer Position Account Type	Type of account used for reporting	C	N/A
Customer LEI	LEI for a particular customer; provide if available	N/A	C
Customer LEI Name	The LEI name associated with the customer position LEI	N/A	C
Margin Account	Margin account identifier	M	N/A
Customer Margin Name	The name associated with the customer margin identifier	N/A	C
Unique Margin Identifier	A single field that uniquely identifies the margin account. This field is used to identify associated positions	M	M
Customer Margin Identifier	Proprietary identifier for a particular customer	N/A	M
Customer Margin Account Type	Account type indicator	N/A	M
FUTURES AND OPTIONS (DAILY CASH FLOW REPORTING)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/ concentration charge if the charge is not included in the initial margin	M	N/A
Concentration Risk	Risk factor component to capture costs associated with the liquidation of a large position	C	C
Delivery Margin	Margin collected to cover delivery risk	C	N/A

M = mandatory C = conditional O = optional.

Field name	Description	House & customer origin	Individual customer account
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons	M	M
Liquidity Risk	Risk component to capture bid/offer costs associated with the liquidation of a large portfolio.	C	C
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date	M	N/A
Total Margin	The total margin requirement for the origin. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO	M	N/A
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin	M	N/A
Market Move Risk	Margin amount associated with market move risk	C	C
Margin Savings	The margin savings amount for the clearing member where there is a cross-margining agreement with another DCO	C	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement	M	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller	C	C
Net Option Value	The credit or debit amount based on the long or short options positions	C	C
Backdated Profit and Loss	The profit and loss (P&L) attributed to positions added that were novated on a prior date	O	N/A
Day Trading Profit and Loss	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark-to-market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L)	M	N/A
Customer Margin Omnibus Parent	The margin identifier for the omnibus account associated with the customer margin identifier. (Conditional on reported customer position being part of a separately reported omnibus account position.)	N/A	C

M = mandatory C = conditional O = optional.

Field name	Description	House & customer origin	Individual customer account
	COMMODITY SWAPS (DAILY CASH FLOW REPORTING)		
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/ concentration charge if the charge is not included in the initial margin	M	N/A
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons	M	M
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date	M	N/A
Total Margin	The total margin requirement for the origin. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO	M	M
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin	M	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement	M	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller	C	N/A
Net Cash Flow	Net cash flow recognized on report date (with actual settlements occurring according to the currency's settlement conventions). E.g., profit/loss, price alignment interest, cash payments (fees, coupons, etc.)	C	N/A
Backdated Profit and Loss	The P&L attributed to positions added that were novated on a prior date	C	N/A
Day Trading Profit and Loss	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark to market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L)	M	N/A
	CREDIT DEFAULT SWAPS (DAILY CASH FLOW REPORTING)		
Additional	Any additional margin required in excess of initial margin.	M	N/A

M = mandatory C = conditional O = optional.

Field name	Description	House & customer origin	Individual customer account
Margin	For example, this figure should include any liquidity/ concentration charge if the charge is not included in the initial margin		
Concentration Risk	Risk factor component to capture costs associated with the liquidation of a large position	C	C
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons	M	M
Liquidity Risk	Risk component to capture bid/offer costs associated with the liquidation of a large portfolio.	C	C
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date	M	N/A
Total Margin	The total margin requirement for the origin. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO	M	C
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin	M	N/A
Spread Response Risk	Risk factor component associated with credit spread level changes and credit term structure shape changes	C	C
Systemic Risk	Risk factor component to capture parallel shift of credit spreads	C	C
Curve Risk	Risk factor that captures curve shifts based on portfolio	C	C
Index Spread Risk	Risk factor component associated with risks due to widening/tightening spreads of credit default swap (CDS) indices relative to each other	C	C
Sector Risk	Risk factor component to capture sector risk	C	C
Jump to Default Risk	Risk factor component to capture most extreme up/down move of a reference entity	C	C
Basis Risk	Risk factor component to capture basis risk between index and index constituent reference entities	C	C
Interest Rate Risk	Risk factor component associated with parallel shift movements in interest rates	C	C
Jump to Health Risk	Risk factor component to capture extreme narrowing of credit spreads of a reference entity; also known as “idiosyncratic risk”	C	C
Other Risk	Any other risk factors included in the margin model	C	C
Recovery	Risk factor component to capture fluctuations of recovery	C	C

M = mandatory C = conditional O = optional.

Field name	Description	House & customer origin	Individual customer account
Rate Sensitivity Risk	rate assumptions		
Wrong Way Risk	Risk that occurs when exposure to a counterparty is adversely correlated with the credit quality of that counterparty. It arises when default risk and credit exposure increase together	C	C
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement	M	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller	C	N/A
Initial Coupon	Amount of coupon premium amount accrued from the start of the current coupon period through the trade date. (Indicate gross pay/collect amounts.)	O	N/A
Upfront Payment	The difference in market value between the standard coupon and the market spread as well as the coupon accrued through the trade date. (Indicate gross pay/collect amounts.)	O	N/A
Trade Cash Adjustment	Additional cash amount on trades. (Indicate gross pay/ collect amounts.)	C	N/A
Quarterly Coupon	Regular payment of quarterly coupon premium amounts. (Indicate gross pay/collect amounts.)	O	N/A
Credit Event Payments	Cash settlement of credit events. (Indicate gross pay/ collect amounts.)	C	N/A
Accrued Coupon	Coupon obligation from the first day of the coupon period through the current clearing trade date. The sum of accrued coupon for each position in the clearing member's portfolio (by origin).	M	N/A
Final Mark to Market	Determined by marking the end-of-day position from par (100%) to the end-of-day settlement price	M	N/A
Backdated Profit and Loss	The P&L attributed to positions added that were novated on a prior date	C	N/A
Day Trading Profit and Loss	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A

M = mandatory C = conditional O = optional.

Field name	Description	House & customer origin	Individual customer account
Total Profit and Loss	Unrealized P&L or mark-to-market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L)	M	N/A
Previous Accrued Coupon	Previous day's accrued coupon	M	N/A
Previous Mark to Market	Previous day's mark to market	M	N/A
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid	M	N/A
FOREIGN EXCHANGE (DAILY CASH FLOW REPORTING)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/ concentration charge if the charge is not included in the initial margin	M	N/A
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons.	M	M
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date	M	N/A
Total Margin	The total margin requirement for the origin. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO	M	M
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin	M	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement	M	N/A
Other Payments	Includes any upfront and/or final/settlement payments made/received for the trade date. (Indicate gross pay/ collect amounts.)	M	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller	C	N/A
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay	M	N/A

M = mandatory C = conditional O = optional.

Field name	Description	House & customer origin	Individual customer account
	interest on cumulative variation margin paid		
Backdated Profit and Loss	The P&L attributed to positions added that were novated on a prior date	C	N/A
Day Trading Profit and Loss	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark-to-market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L)	M	N/A
	INTEREST RATE SWAPS (DAILY CASH FLOW REPORTING)		
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/ concentration charge if the charge is not included in the initial margin	M	N/A
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons	M	M
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date	M	N/A
Total Margin	The total margin requirement for the origin. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO	M	M
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin	M	N/A
Cross-Margined Products Profit/Loss	P&L resulting from changes in value due to changes in the futures price. This P&L should only include changes to the cross-margined futures in the account	C	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller	C	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement	M	N/A
Other	Includes any upfront and/or final/settlement payments	C	N/A

M = mandatory C = conditional O = optional.

Field name	Description	House & customer origin	Individual customer account
Payments	made/received for the trade date. (Indicate gross pay/ collect amounts.)		
Net Coupon Payment	Net amount of any coupon cash flows recognized on report date but actually occurring on currency's settlement convention date. (Indicate gross pay/collect amounts.)	M	N/A
Net Present Value	Net present value (NPV) of all positions by currency	M	N/A
Net Present Value Previous	Previous day's NPV by currency	M	N/A
PV of Other Payments	Includes the present value of any upfront and/or final/ settlement payments that will be settled after the report date. Only include amounts that are affecting the NPV of current trades	M	N/A
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid	M	N/A
Accrued Coupon	Coupon obligation from the first day of the coupon period through the current clearing trade date. The sum of accrued coupon for each position in the clearing member's portfolio (by origin)	M	N/A
Backdated Profit and Loss	The P&L attributed to positions added that were novated on a prior date	C	N/A
Day Trading Profit and Loss	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark-to-market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L).	M	N/A
EQUITY CROSS MARGIN (DAILY CASH FLOW REPORTING)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/ concentration charge if the charge is not included in the initial margin	M	N/A
Initial Margin	Margin requirement calculated by the DCO's margin	M	M

M = mandatory C = conditional O = optional.

Field name	Description	House & customer origin	Individual customer account
	methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons resulting from liquidity/concentration charges		
Liquidity Risk	Risk component to capture bid/offer costs associated with the liquidation of a large portfolio	C	C
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date.	M	N/A
Total Margin	The total margin requirement for the origin. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO	M	N/A
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin.	M	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement	M	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller	C	N/A
Net Option Value	The credit or debit amount based on the long or short options positions	C	C
Backdated Profit and Loss	The P&L attributed to positions added that were novated on a prior date.	C	N/A
Day Trading Profit and Loss	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark to market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L)	M	N/A
	CONSOLIDATED (DAILY CASH FLOW REPORTING)		
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/ concentration charge if the charge is not included in the initial margin	M	N/A
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin	M	N/A

M = mandatory C = conditional O = optional.

Field name	Description	House & customer origin	Individual customer account
	methodology, this figure should not include any additional margin add-ons		
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date	M	N/A
Total Margin	The consolidated non-U.S. margin requirement for the origin. The consolidated non-U.S. margin requirement should include the initial margin requirement plus any additional margin required by the DCO	M	N/A
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin	M	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement	M	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller	C	N/A
Backdated Profit and Loss	The P&L attributed to positions added that were novated on a prior date	C	N/A
Day Trading Profit and Loss	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark-to-market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L)	M	N/A
	EXEMPT DCO (DAILY CASH FLOW REPORTING)		
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/ concentration charge if the charge is not included in the initial margin	M	N/A
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons	M	N/A
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date	M	N/A
Total Margin	The U.S. person margin requirement for the origin by	M	N/A

M = mandatory C = conditional O = optional.

Field name	Description	House & customer origin	Individual customer account
	currency contribution. If the traded currency's swaps (i.e., JY) offset risk of other currencies, include an amount of zero for that currency. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO		
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin	M	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement	M	N/A
Mark-to-Market	Determined by marking the end of day position(s) from par (100%) to the end of day settlement price	M	N/A

M = mandatory C = conditional O = optional.

B. Daily Position Reporting

Field name	Description	Use
COMMON FIELDS (DAILY POSITION REPORTING)		
Total Message Count	The total number of reports included in the file	M
FIXML Message Type	FIXML account summary report type	M
Sender ID	The CFTC-issued DCO identifier	M
To ID	Indicate “CFTC”	M
Message Transmit Datetime	The date and time the file is transmitted	M
Report ID	A unique identifier assigned by the CFTC to each clearing member report	M
Report Date	The business date of the information being reported	M
Base Currency	Base currency referenced throughout report; provide exchange rate against this currency	M
Report Time (Message Create Time)	The report “as of” or information cut-off time	M
Message Event	The event source being reported	M

M = mandatory C = conditional O = optional.

Field name	Description	Use
Market Segment ID	Market segment associated with the position report	M
DCO Identifier	CFTC-assigned identifier for a DCO	M
Clearing Participant Identifier	DCO-assigned identifier for a particular clearing member	M
Clearing Participant Name	The name of the clearing member	M
Fund Segregation Type	Clearing fund segregation type	M
Clearing Participant LEI	LEI for a particular clearing member	C
Clearing Participant LEI Name	The LEI name associated with the clearing member LEI	C
Customer Position Identifier	Proprietary identifier for a particular customer position account	C
Customer Position Name	The name associated with the customer position identifier	M
Customer Position Account Type	Type of account used for reporting	C
Customer Position LEI	LEI for a particular customer; must be provided when available	C
Customer Position LEI Name	The LEI name associated with the Customer Position LEI	C
Customer Margin Identifier	Proprietary identifier for a particular customer	C
Customer Margin Name	The name associated with the customer margin identifier	C
Unique Margin Identifier	A single field that uniquely identifies the margin account. This field is used to identify associated positions	M
FUTURES AND OPTIONS (DAILY POSITION REPORTING)		
Settlement Price/ Currency	Settlement price, prior settlement price, settlement currency, and final settlement date	M
Cross-Margin Entity	Name of the entity associated with a cross-margined account	C
Exchange Commodity Code	Contract commodity code issued by the exchange; *e.g.,* ticker symbol, the human recognizable trading identifier	M
Clearing	Registered commodity clearing identifier. The code is for the contract as if	M

M = mandatory C = conditional O = optional.

Field name	Description	Use
Commodity Code	it was traded in the form it is cleared. For example, if the contract was traded as a spread but cleared as an outright, the outright symbol should be used	
Product Type	Indicates the type of product with which the security is associated	C
Security Type	Indicates type of security	M
Maturity Month Year	Month and year of the maturity	M
Maturity Date	The date on which the principal amount becomes due	C
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Asset Subtype	Provides a more specific description of the asset type	C
Security Group (Sector)	A name assigned to a group of related instruments which may be concurrently affected by market events and actions	C
Unit Leverage Factor	The multiplier needed to convert a change of one point of the quoted index into local currency P&L for a 1-unit long position	M
Units	Unit of measure	M
Settlement Method	Method of settlement	C
Exchange Identifier (MIC)	Exchange where the instrument is traded, per ISO 10383	M
Security Description	Used to provide a textual description of a financial instrument	M
Unique Product Identifier	A single field that uniquely identifies a given product. All positions with this identifier will have the same price	M
Alternate Product Identifier—Spread Underlying Long	When a contract represents a differential between two products, the product code that represents the long position in the spread for long position in the combined contract	C
Alternate Product Identifier—Spread Underlying Short	When a contract represents a differential between two products, the product code that represents the long position in the spread for short position in the combined contract	C
Last Trading Date	The last day of trading in a futures contract	M
First Notice Date	The first date on which delivery notices are issued	C
Position (Long)	Long position size. If a position is quoted in a unit of measure (UOM) different from the contract, specify the UOM. If a position is measured in a currency, specify the currency	M
Position (Short)	Short position size. If a position is quoted in a UOM different from the contract, specify the UOM. If a position is measured in a currency, specify the currency	M

M = mandatory C = conditional O = optional.

Field name	Description	Use
Settlement FX Info	Settlement price foreign exchange conversion rate	M
Change in Settlement Price	The quoted price change between the prior trading day's settlement and today's settlement	M
Unit Currency P&L	The local currency P&L between the prior trading day's settlement and today's settlement for a 1-unit long position	M
Outright Initial Margin	Initial margin for the position as if it were a stand-alone outright position	C
Option Exercise Style	Exercise style	C
Option Strike Price	Option strike price	C
Option Put/Call Indicator	Option type	C
Underlying Settlement Price/ Currency	Settlement price, prior settlement price, settlement currency, and final settlement date	C
Underlying Exchange Commodity Code	Underlying Contract code issued by the exchange	C
Underlying Clearing Commodity Code	Registered commodity clearing identifier. The code is for the contract as if it was traded in the form it is cleared. For example, if the contract was traded as a spread but cleared as an outright, the outright symbol should be used	C
Underlying Product Type	Indicates the type of product the security is associated with	C
Underlying Security Type	Indicator which identifies the underlying derivative type	C
Underlying Security Group (Sector)	A name assigned to a group of related instruments which may be concurrently affected by market events and actions	C
Underlying Maturity Month Year	Month and year of the maturity	C
Underlying Maturity Date	The date on which the principal amount becomes due	C
Underlying Asset Class	The underlying broad asset category for assessing risk exposure	C
Underlying Asset Subclass	The subcategory description of the asset class	C
Underlying Asset	Provides a more specific description of the asset subclass	C

M = mandatory C = conditional O = optional.

Field name	Description	Use
Type		
Underlying Asset Subtype	Provides a more specific description of the asset type.	C
Underlying Exchange Code (MIC)	Exchange where the underlying instrument is traded	C
Underlying Security Description	Textual description of a financial instrument	C
Unique Underlying Product Code	A single field that is the result of concatenating relevant fields that create a unique product ID that is associated with a unique price	C
Primary Options Exchange Code—Implied Volatility Quote	This field identifies the main options chain for the future that provides the implied volatility quote	C
DELTA	Delta is the measure of how the option's value varies with changes in the underlying price	C
Implied Volatility	The implied volatility and quotation style for the contract, typically in natural log percent or index points	C
Customer Margin Omnibus Parent	The margin identifier for the omnibus account associated with the customer margin identifier. (Conditional on reported customer position being part of a separately reported omnibus account position)	C
COMMODITY SWAPS (DAILY POSITION REPORTING)		
Settlement Price/ Currency	Settlement price, prior settlement price, settlement currency, and final settlement date	M
Exchange Commodity Code	Contract commodity code issued by the exchange; *e.g.,* ticker symbol, the human recognizable trading identifier	M
Clearing Commodity Code	Registered commodity clearing identifier. The code is for the contract as if it was traded in the form it is cleared. For example, if the contract was traded as a spread but cleared as an outright, the outright symbol should be used	M
Product Type	Indicates the type of product with which the security is associated	C
Security Group (Sector)	A name assigned to a group of related instruments which may be concurrently affected by market events and actions	C
Unique Product Identifier	A unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to 17 CFR 45.7	O
Maturity Month Year	Month and year of the maturity	M
Maturity Date	The date on which the principal amount becomes due	C
Asset Class	The broad asset category for assessing risk exposure	M

M = mandatory C = conditional O = optional.

Field name	Description	Use
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Unit Leverage Factor	The multiplier needed to convert a change of one point of the quoted index into local currency P&L for a 1-unit long position	C
Minimum Tick	Minimum price tick increment	C
Units	Unit of measure	M
Settlement Method	Swap settlement method	C
Exchange Identifier (MIC)	Exchange where the instrument is traded	M
Security Description	Used to provide a textual description of a financial instrument	C
Security Type	Indicates type of security	M
Position (Long)	Long position size. If a position is quoted in a UOM different from the contract, specify the UOM. If a position is measured in a currency, specify the currency	M
Position (Short)	Short position size. If a position is quoted in a UOM different from the contract, specify the UOM. If a position is measured in a currency, specify the currency	M
Net Cash Flow	Net cash flow recognized on report date (with actual settlements occurring according to the currency's settlement conventions). *E.g.,* profit/loss, price alignment interest, cash payments (fees, coupons, etc.)	C
Settlement FX Info	Settlement price foreign exchange conversion rate	M
Universal (or Unique) Swap Identifier	Universal (or Unique) Swap Identifier (USI) namespace and USI. The USI namespace and the USI should be separated by a pipe “|” character	M
Option Exercise Style	Exercise style	C
Option Put/Call Indicator	Option type	M
Option Strike Price	Option strike price	M
Underlying Settlement Price/ Currency	Settlement price, prior settlement price, settlement currency, and final settlement date	M
Underlying Exchange Commodity Code	Underlying Contract code issued by the exchange	C
Underlying Clearing	Registered commodity clearing identifier. The code is for the contract as if it was traded in the form it is cleared. For example, if the contract was	M

M = mandatory C = conditional O = optional.

Field name	Description	Use
Commodity Code	traded as a spread but cleared as an outright, the outright symbol should be used	
Underlying Product Type	Indicates the type of product the security is associated with	C
Underlying Security Group (Sector)	A name assigned to a group of related instruments which may be concurrently affected by market events and actions	C
Underlying Maturity Month Year	Month and year of the maturity	M
Underlying Maturity Date	The date on which the principal amount becomes due	C
Underlying Asset Class	The underlying broad asset category for assessing risk exposure	M
Underlying Asset Subclass	The subcategory description of the asset class	C
Underlying Asset Type	Provides a more specific description of the asset subclass	C
Underlying Exchange Code (MIC)	Exchange where the underlying instrument is traded	M
Underlying Security Type	Indicates type of security	M
Underlying Security Description	Textual description of a financial instrument	C
DELTA	Delta is the measure of how the option's value varies with changes in the underlying price	C
CREDIT DEFAULT SWAPS (DAILY POSITION REPORTING)		
Settlement Price/ Currency	Settlement price, prior settlement price, settlement currency, and final settlement date	M
Exchange Security Identifier	Contract code issued by the exchange	O
Redcode	The code assigned to the CDS by Markit that identifies the referenced entity or the index, series and version. (Underlying instrument is required for Security Type = SWAPTION.)	M
Unique Product Identifier	A unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to Commission regulation 17 CFR 45.7	O
Security Type	Indicator which identifies the derivative type	M
Restructuring	This field is used if the index has been restructured due to a credit event	M

M = mandatory C = conditional O = optional.

Field name	Description	Use
Type		
Seniority Type	The class of debt	M
Maturity Date	The date on which the principal amount becomes due	C
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Reference Entity Type (Sector)	Specifies the type of reference entity for first-to-default CDS basket contracts. The Markit sector code should be provided when available	M
Coupon Rate	The coupon rate associated with this CDS transaction stated in Basis Points	M
Security Description (Reference Entity)	Name of CDS index or single-name or sovereign debt	M
Recovery Factor	The assumed recovery rate used to determine the CDS price	O
Position (Long)	Long position size. If a position is quoted in a UOM different from the contract, specify the UOM. If a position is measured in a currency, specify the currency	M
Position (Short)	Short position size. If a position is quoted in a UOM different from the contract, specify the UOM. If a position is measured in a currency, specify the currency	M
5 YR Equivalent Notional	The five-year equivalent notional amount for each risk factor/reference entity CDS contract	M
Accrued Coupon	Coupon obligation from the first day of the coupon period through the current clearing trade date	M
Profit and Loss	Unrealized P&L or mark to market value of position(s) including change in mark to market plus change in accrued coupon plus change in unsettled upfront fees. Does not include cash flows related to quarterly coupon payments, credit event payments, or price alignment interest	M
Credit Exposure (CS01)	The credit exposure of the swap at a given point in time. CS01 = Spread DV01 = “dollar” value of a basis point = In currency (not percentage) terms, the change in fair value of the leg, transaction, position, or portfolio (as appropriate) commensurate with a 1 basis point (0.01 percent) instantaneous, hypothetical increase in the related credit spread curves. CS01/Spread DV01 may refer to non-dollar currencies and related curves. From the DCO's point of view: positive CS01 = gain in value resulting from 1 basis point increase, negative CS01 = loss of value resulting from 1 basis point increase	C
Mark to Market	Determined by marking the end of day position(s) from par (100%) to the end of day settlement price	M
Price Value of a	Change in P&L of a position given a one basis point move in CDS spread	M

M = mandatory C = conditional O = optional.

Field name	Description	Use
Basis Point (PV01)	value. May also be referred to as DV01, Sprd DV01	
Previous Accrued Coupon	Previous day's accrued coupon	M
Previous Mark to Market	Previous day's mark to market	M
Universal (or Unique) Swap Identifier	Universal (or Unique) Swap Identifier (USI) namespace and USI. The USI namespace and the USI should be separated by a pipe “|” character	O
Option Strike Price	Option strike price	C
Settlement Method	Method of settlement	C
Option Exercise Style	Exercise style	C
Option Put/Call Indicator	Option type	C
Option Type	Specifies the option type	C
Option Start Date	The option adjusted start date	C
Option Expiration Date—Adjusted	The CDS option adjusted expiration date	C
Underlying Exchange Security Identifier	The underlying contract alias used by outside vendors to uniquely identify the contract	O
Underlying Clearing Security Identifier (Red Code)	The underlying code assigned to the CDS by Markit that identifies the referenced entity or the index, series and version	C
Underlying Unique Product Identifier	A unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to Commission regulation 17 CFR 45.7	O
Underlying Security Type	Indicator which identifies the underlying derivative type	C
Underlying Restructuring Type	This field is used if the underlying index has been restructured due to a credit event	C
Underlying Seniority Type	The underlying class of debt	C
Underlying Maturity Date	The date on which the principal amount becomes due	C
Underlying Asset	The underlying broad asset category for assessing risk exposure	C

M = mandatory C = conditional O = optional.

Field name	Description	Use
Class		
Underlying Asset Subclass	The subcategory description of the asset class	C
Underlying Asset Type	Provides a more specific description of the asset subclass	C
Underlying Reference Entity Type (Sector)	Specifies the type of underlying reference entity for first-to-default CDS basket contracts	C
Underlying Coupon Rate	The underlying coupon rate associated with this CDS transaction stated in basis points	C
Underlying Security Description	Textual description of a financial instrument	C
Underlying Recovery Factor	The assumed recovery rate used to determine the underlying CDS price	C
DELTA	Delta is the measure of how the option's value varies with changes in the underlying price	M
GAMMA	Gamma is the rate of change for delta with respect to the underlying asset's price	M
RHO	Rho measures the sensitivity of an option's price to a variation in the risk-free interest rate	M
THETA	Theta is the rate at which an option loses value as time passes	M
VEGA	Vega is the measurement of an option's sensitivity to changes in the volatility of the underlying asset	M
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller	C
Option Premium Date	Date swaption premium is paid	C
FOREIGN EXCHANGE (DAILY POSITION REPORTING)		
Settle Date	Settle date of the position	M
Settlement Price/ Fixing Currency	Settlement price of the position	M
Discount Factor	Discount factor for the position. Use the factor for the Mark to Market (MTM) currency	M
Valuation Date	Valuation date of the position	M
Delivery Date	Delivery date of the position	M
Clearing Security Identifier	Code assigned by the DCO for a particular contract	M
Unique Product Identifier	A unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to Commission regulation 17 CFR 45.7	O

M = mandatory C = conditional O = optional.

Field name	Description	Use
Security Type	Registered commodity clearing identifier. (Underlying instrument is required for Security Type = FXOPT | FXNDO.)	M
Maturity Month Year	Month and year of the maturity	C
Maturity Date (Expiration)	Specifies date of maturity (a calendar date). Used for FXFWD/FXNDF. For non-deliverable forwards (NDFs), this represents the fixing date of the contract	C
Maturity Time (Expiration)	The contract expiration time. (Used for FXFWD/FXNDF.)	C
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Valuation Method	Specifies the type of valuation method applied	C
Security Description	Used to provide a textual description of a financial instrument	C
Foreign Exchange Type	Identifies the type of FX contract. Use Typ = 7 for direct FX (*e.g.,* EUR/USD). Use Typ = 16 for NDFWD contracts (*e.g.,* THB/INR settled in USD)	M
Currency One	Specifies the first or only reference currency of the trade	M
Currency Two	Specifies the second reference currency of the trade	M
Quote Basis	For foreign exchange quanto option feature	M
Fixed Rate	(FXFWD or FXNDF only). Specifies the forward FX rate alternative	C
Spot Rate	Specifies the FX spot rates the first or only reference currency of the trade	C
Forward Points	(FXFWD or FXNDF only) The interest rate differential in basis points between the base and quote currencies in a forward rate quote. May be a negative value. (The number of basis points added to or subtracted from the current spot rate of a currency pair to determine the forward rate for delivery on a specific value date.)	C
Delivery Type Indicator	Delivery type indicator	M
Position—Long	Gross long position. An affirmative zero value should be reported for the long position. (Both long and short positions are required.) For FXNDF use Typ = DLV for settlement currency	M
Position—Short	Gross short position. An affirmative zero value should be reported for the short position. (Both long and short positions are required.) For FXNDF use Typ = DLV for settlement currency	M
Final Mark to Market	Mark to market which includes the discount factor	M
Dollar Value of a Basis Point (DV01)—Long	The dollar value of a one basis point change (DV01) in the yield of the underlying security and that of the hedging vehicle	M

M = mandatory C = conditional O = optional.

Field name	Description	Use
Currency		
Dollar Value of a Basis Point (DV01)—Short Currency	The dollar value of a one basis point change (DV01) in the yield of the underlying security and that of the hedging vehicle	M
Net Cash Flow	Net cash flow recognized on report date (with actual settlements occurring according to the currency's settlement conventions). *E.g.,* profit/loss, price alignment interest, cash payments (fees, coupons, etc.)	M
Undiscounted Mark to Market	Mark to market, which does not include the discount factor	M
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid	M
Universal (or Unique) Swap Identifier	Universal (or Unique) Swap Identifier (USI) namespace and USI. The USI namespace and the USI should be separated by a pipe "|" character	M
Option Put/Call Indicator	Option type	C
Strike Rate	Option strike rate	C
Option Exercise Style	Exercise style	C
Option Cut Name	The code by which the expiry time is known in the market	C
Underlying Settlement Price/ Fixing Currency	Settlement price for the position. (Underlying settlement is required for FXOPT, FXNDO.)	C
Underlying Exchange Security Code	Security code issued by the exchange; *e.g.,* ticker symbol, the human recognizable trading identifier	C
Underlying Clearing Security Identifier	Code assigned by the DCO for the underlying contract	C
Underlying Unique Product Identifier	A unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to Commission regulation 17 CFR 45.7	O
Underlying Security Type	Indicator which identifies the underlying derivative	C
Underlying Maturity Month Year	Month and year of the maturity	C
Underlying Maturity Date	For FXFWD/FXNDF, the date on which the principal amount becomes due. For NDFs, this represents the fixing date of the contract	C

M = mandatory C = conditional O = optional.

Field name	Description	Use
(Expiration)		
Underlying Exchange Identifier (MIC)	Exchange where the underlying instrument is traded	C
Underlying Security Description	Textual description of a financial instrument	C
Option Long/ Short Indicator	Indicates whether the option is short or long	C
Option Expiration	Adjusted option expiration date	C
Notional Long/ Short	FX currency notional long or short	M
Implied Volatility	The implied volatility and quotation style for the contract, typically in natural log percent or index points	C
DELTA	Delta is the measure of how the option's value varies with changes in the underlying price	M
GAMMA	Gamma is the rate of change for delta with respect to the underlying asset's price	M
RHO	Rho measures the sensitivity of an option's price to a variation in the risk-free interest rate	M
THETA	Theta is the rate at which an option loses value as time passes	M
VEGA	Vega is the measurement of an option's sensitivity to changes in the volatility of the underlying asset	M
Option Premium MTM	Premium mark to market, which includes the discount factor	C
INTEREST RATE SWAPS (DAILY POSITION REPORTING)		
Cleared Date	Date on which the trade was cleared at the DCO	M
Position Status	Position status: active, or terminated. Terminated positions should only be reported on the day of termination	M
DCO Pays Indicator	Indicate which cash flow the DCO pays	M
DCO Receives Indicator	Indicate which cash flow the DCO receives	M
Clearing Participant Pays Indicator	Indicate which cash flow the clearing member pays	M
Clearing Participant Receives Indicator	Indicate which cash flow the clearing member receives	M
Clearing Security	Code assigned by the DCO for a particular contract	M

M = mandatory C = conditional O = optional.

Field name	Description	Use
Identifier		
Unique Product Identifier	A unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to Commission regulation 17 CFR 45.7	O
Security Type	Registered commodity clearing identifier	M
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Swap Class	The classification or type of swap	M
Swap Subclass	The sub-classification or notional schedule type of the swap	C
Security Description	Used to provide a textual description of a financial instrument	M
Leg Type	Identifies if the leg is fixed or floating	M
Leg Notional	Notional amount associated with leg	M
Leg Notional Currency	Currency of the leg's notional amount	M
Leg Start Date Adj Bus Day Conv	If start date falls on a weekend or holiday, value defines how to adjust actual start date	C
Leg Start Date	Leg's effective date	M
Leg Maturity Date Adj Bus Day Conv	If the maturity date falls on a weekend or holiday, value defines how to adjust actual maturity date	C
Leg Maturity Date	The date on which the leg's principal amount becomes due	M
Leg Maturity Date Adj Calendar	Regarding the maturity date, this specifies which dates are considered holidays	C
Leg Calculation Period Adjusted Business Day Convention	If a date defining the calculation period falls on a holiday, this adjusts the actual dates based on the definition of the input	C
Leg Calculation Frequency	Calculation frequency, also known as the compounding frequency for compounded swaps	M
Leg First Reg Per Start Date	If there is a beginning stub, this indicates the date when the usual payment periods will begin	C
Leg Last Reg Per End Date	If there is an ending stub, this indicates the date when the usual payment periods will end	C
Leg Roll Conv	Indicates the day of the month when the payment is made	C
Leg Calc Per Adj Calendar	Regarding the calculation period, this specifies which dates are considered holidays	C

M = mandatory C = conditional O = optional.

Field name	Description	Use
Leg Daycount	Defines how interest is accrued/calculated	C
Leg Comp Method	If payments are made on one timeframe but calculations are made on a shorter timeframe, this describes how to compound interest	C
Leg Pay Adj Bus Day Conv	If cash flow pay or receive date falls on a weekend or holiday, value defines actual date payment is made	C
Leg Pay Frequency	Frequency at which payments are made	M
Leg Pay Relative To	Payment relative to the beginning or end of the period	C
Leg Payment Lag	Number of business days after payment due date on which the payment is actually made	C
Leg Pay Adj Calendar	Regarding dates on which cash flow payments/receipts are scheduled, this specifies which dates are considered holidays	C
Leg Reset Relative To	Specifies whether reset dates are determined with respect to each adjusted calculation period start date or adjusted calculation period end date	C
Leg Reset Date Adj Bus Day Conv	Business day convention to apply to each reset date if the reset date falls on a holiday	C
Leg Reset Frequency	Frequency at which resets occur. If the Leg Reset Frequency is greater than the calculation per frequency, more than 1 reset date should be established for each calculation per frequency and some form of rate averaging is applicable	C
Leg Fixing Date Bus Day Conv	Business day convention to apply to each fixing date if the fixing date falls on a holiday	C
Leg Fixing Date Offset	Specifies the fixing date relative to the reset date in terms of a business days offset	C
Leg Fixing Day Type	The type of days to use to find the fixing date (*i.e.,* business days, calendar days, etc.)	C
Leg Reset Date Adj Calendar	Regarding reset dates, this specifies which dates are considered holidays	C
Leg Fixing Date Calendar	Regarding the fixing date, this specifies which dates are considered holidays	C
Leg Fixed Rate or Amount	Only populate if Leg1 is Type “Fixed”. This should be expressed in decimal form (*e.g.,* 4% should be input as “.04”)	C
Leg Index	If Stream is floating rate, this gives the index applicable to the floating rate	C
Leg Index Tenor	For the floating rate leg, the tenor of the leg. For the fixed rate leg, NULL	C
Leg Spread	Describes if there is a spread (typically an add-on) applied to the coupon rate	C
Leg Pmt Sched Notional	Variable notional swap notional values	C
Leg Initial Stub	The interest rate applicable to the Initial Stub Period in decimal form (*e.g.,*	C

M = mandatory C = conditional O = optional.

Field name	Description	Use
Rate	4% should be input as ".04")	
Leg Initial Stub Rate Index 1	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.,* if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the first index	C
Leg Initial Stub Rate Index 2 Tenor	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.,* if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the second index	C
Leg Final Stub Rate	The interest rate applicable to the final stub period in decimal form (*e.g.,* 4% should be input as ".04")	C
Leg Final Stub Rate Index 1	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.,* if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the first index	C
Leg Final Stub Rate Index 2 Tenor	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.,* if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the second index	C
Accrued Coupon (Interest)	Net accrued coupon amount since the last payment in the leg currency. If reported by leg, indicate the associated stream (leg) description (*e.g.,* "FIXED/FLOAT," "FLOAT1/FLOAT2")	M
Profit/Loss	Profit/loss resulting from changes in value due to changes in underlying curve movements or floating index rate resets. This should exclude impacts to NPVs from extraneous cash flows (price alignment interest, fees, and coupons)	M
Leg Current Period Rate	If leg is a floating leg, this indicates the current rate used to calculate the next floating Leg coupon in decimal form (*e.g.,* 4% should be input as ".04")	M
Leg Coupon Payment	Coupon amount for T + 1 in the leg currency. This should reflect the net cash flow that will actually occur on the following business day. Negative number indicates that a payment was made	M
Dollar Value of Basis Point (DV01)	Change in value in USD if the relevant pricing curve is shifted up by 1 basis point. DV01 = "dollar" value of a basis point in currency (not percentage) terms, the change in fair value of the leg, transaction, position, or portfolio (as appropriate) commensurate with a 1 basis point (0.01 percent) instantaneous, hypothetical increase in the related zero-coupon curves. DV01 may refer to non-dollar currencies and related curves. From the DCO's point of view: positive DV01 = profit/gain resulting from 1 basis point increase, negative DV01 = loss resulting from 1 basis point increase	M
Net Cash Flow	Net cash flow recognized on report date (with actual settlements occurring according to the currency's settlement conventions). *E.g.,* Profit/Loss, price alignment interest, cash payments (fees, coupons, etc.)	M
Net Present Value	Net present value (NPV) of all positions by currency	M

M = mandatory C = conditional O = optional.

Field name	Description	Use
Present Value of Other Payments	Includes the present value of any upfront and/or final/settlement payments that will be settled after the report date. Only include amounts that are affecting the NPV of current trades	M
Net Present Value Previous	Previous day's NPV by currency	C
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid	M
Other Payments	Includes any upfront and/or final/settlement payments made/received for the trade date. (Indicate gross pay/collect amounts.)	C
Universal (or Unique) Swap Identifier	Universal (or Unique) Swap Identifier (USI) namespace and USI. The USI namespace and the USI should be separated by a pipe “|” character	C
Leg Initial Exchange	Amount of any exchange of cash flow at initiation of trade being cleared	C
Leg Initial Exchange Date	Date that the initial exchange is set to occur	C
Leg Final Exchange	Amount of any exchange of cash flow at maturity of trade	C
Leg Final Exchange Date	Date that the final exchange is set to occur	C
Option Exercise Style	Exercise style	C
Option Type	Specifies the option type	C
Option Start Date	The option adjusted start date	C
Option Adjusted Expiration Date	The IRS swaption adjusted expiration date	C
Option Buy/Sell Indicator	Indicates the buyer or seller of a swap stream	C
Underlying Clearing Security Identifier	Code assigned by the DCO for the underlying contract	C
Underlying Unique Product Identifier	A unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to 17 CFR 45.7	C
Underlying Security Type	Indicator which identifies the underlying derivative	C
Underlying Asset Class	The underlying broad asset category for assessing risk exposure	C
Underlying Asset Subclass	The subcategory description of the asset class	C

M = mandatory C = conditional O = optional.

Field name	Description	Use
Underlying Asset Type	Provides a more specific description of the asset subclass	C
Underlying Swap Class	The classification or type of swap	C
Underlying Swap Subclass	The sub-classification or notional schedule type of the swap	C
Underlying Security Description	Textual description of a financial instrument	C
Underlying Security Leg Type	Identifies if the leg is fixed or floating	C
Underlying Security Leg Notional	Notional amount associated with leg	C
Underlying Security Leg Currency	Currency of this leg's notional amount	C
Underlying Security Leg Index	If stream is floating rate, this gives the index applicable to the floating rate	C
Underlying Security Leg Index Tenor	For the floating rate leg, the tenor of the leg. For the fixed rate leg, NULL	C
Underlying Security Leg Fixed Rate Or Amount	Only populate if Leg1 is type “Fixed”. This should be in decimal form (*e.g.,* 4% should be input as “.04”)	C
Underlying Security Leg Spread	Indicates whether there is a spread (typically an add-on) applied to the coupon rate	C
DELTA	Delta is the measure of how the option's value varies with changes in the underlying price	M
GAMMA	Gamma is the rate of change for delta with respect to the underlying asset's price	M
RHO	Rho measures the sensitivity of an option's price to a variation in the risk-free interest rate	M
THETA	Theta is the rate at which an option loses value as time passes	M
VEGA	Vega is the measurement of an option's sensitivity to changes in the volatility of the underlying asset	M
Option Premium	Premium registered on the given trading date. The amount of money that	C

M = mandatory C = conditional O = optional.

Field name	Description	Use
	the options buyer must pay the options seller	
Option Premium Date	Date option premium is paid	C
Trade Date	Date a transaction was originally executed, resulting in the generation of a new USI. For clearing swaps, the date when the DCO accepts the original swap	M
Event Description	Description for each position record	C
FORWARD RATE AGREEMENTS (DAILY POSITION REPORTING)		
Previous Business Date	Previous business date	M
Position Status	Position status: active or terminated. Terminated positions should only be reported on the day of termination	M
DCO Pays Indicator	Indicates which cash flow the DCO pays	M
DCO Receives Indicator	Indicates which cash flow the DCO receives	M
Clearing Participant Pays Indicator	Indicates which cash flow the clearing member pays	M
Clearing Participant Receives Indicator	Indicates which cash flow the clearing member receives	M
Clearing Security Identifier	Code assigned by the DCO for a particular contract	M
Unique Product Identifier	A unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to 17 CFR 45.7	O
Security Type	Registered commodity clearing identifier	M
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
FRA Type	Type of swap stream	M
Notional Amount	Stream notional amount	M
Notional Currency	Currency of leg notional amount	M
Start Date	Date the position was established	M
Maturity Date	The date on which the principal amount becomes due	M
Payment Day Count Convention	Defines how interest is accrued/calculated	M

M = mandatory C = conditional O = optional.

Field name	Description	Use
Payment Accrual Days	Number of accrual days between the effective date and maturity date	M
First Payment Date	Date on which the payment is made. Always report the adjusted date	C
Reset Date Bus Day Convention	Business day convention to apply to each fixing date if the fixing date falls on a holiday	M
Reset Date Fixing Date	Date on which the payment is fixed. Always report the adjusted date	M
Fixed Rate	The fixed amount in decimal terms	M
Float Index	The index for the floating portion of the Forward Rate Agreement (FRA)	M
Float First Tenor	First tenor associated with the index	M
Float Second Tenor	Second tenor associated with the index	C
Float Spread	In basis point terms	M
Float Reference Rate	The fixed floating rate in decimal terms	M
PV01	Change in value in native currency if the relevant pricing curve is shifted up by 1 basis point	M
Dollar Value of Basis Point (DV01)	Change in value in USD if the relevant pricing curve is shifted up by 1 basis point. DV01 = “dollar” value of a basis point in currency (not percentage) terms, the change in fair value of the leg, transaction, position, or portfolio (as appropriate) commensurate with a 1 basis point (0.01 percent) instantaneous, hypothetical increase in the related zero-coupon curves. DV01 may refer to non-dollar currencies and related curves. From the DCO's point of view: positive DV01 = profit/gain resulting from 1 basis point increase, negative DV01 = loss resulting from 1 basis point increase	M
Net Present Value	Net present value (NPV) of all positions by currency	M
Settlement FX Info	Settlement price foreign exchange conversion rate	M
Net Present Value Previous	Previous day's NPV by currency	M
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid	M
Universal (or Unique) Swap Identifier	Universal (or Unique) Swap Identifier (USI) namespace and USI. The USI namespace and the USI should be separated by a pipe “|” character	C
Settlement Amount	The amount paid/received on the Payment Date. Always report adjusted date. (The position pays on a negative amount.)	M

M = mandatory C = conditional O = optional.

Field name	Description	Use
Other Payments	Includes any upfront and/or final/settlement payments made/received for the trade date. (Indicate gross pay/collect amounts.)	C
Net Cash Flow	Net cash flow recognized on report date (with actual settlements occurring according to the currency's settlement conventions). *E.g.,* profit/loss, price alignment interest, cash payments (fees, coupons, etc.)	C
Profit/Loss	Profit/Loss resulting from changes in value due to changes in underlying curve movements or floating index rate resets. Should exclude impacts to NPVs from extraneous cash flows (price alignment interest, fees, and coupons)	C
Present Value of Other Payments	Includes the present value of any upfront and/or final/settlement payments that will be settled after the report date. Only include amounts that are affecting the NPV of current trades	C
Trade Date	Actual trade date for each position record (including specifically, the cleared date and the trade date)	M
Event Description	Description for each position record	C
INFLATION INDEX SWAPS (DAILY POSITION REPORTING)		
Cleared Date	Date on which the trade was cleared at the DCO	M
Position Status	Position's status: active or terminated. Terminated positions should only be reported on the day of termination	M
DCO Pays Indicator	Indicate which cash flow the DCO pays	M
DCO Receives Indicator	Indicate which cash flow the DCO receives	M
Clearing Participant Pays Indicator	Indicate which cash flow the clearing member pays	M
Clearing Participant Receives Indicator	Indicate which cash flow the clearing member receives	M
Clearing Security Identifier	Code assigned by the DCO for a particular contract	M
Unique Product Identifier	A unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to 17 CFR 45.7	O
Security Type	Registered commodity clearing identifier	M
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Swap Class	The classification or type of swap	M
Swap Subclass	The sub-classification or notional schedule type of the swap	C
Security	Used to provide a textual description of a financial instrument	M

M = mandatory C = conditional O = optional.

Field name	Description	Use
Description		
Leg Type	Identifies if the leg is fixed or floating	M
Leg Notional	Notional amount associated with leg	M
Leg Notional Currency	Currency of the leg's notional amount	M
Leg Start Date Adj Bus Day Conv	If start date falls on a weekend or holiday, value defines how to adjust actual start date	C
Leg Start Date	Leg's effective date	M
Leg Maturity Date Adj Bus Day Conv	If the maturity date falls on a weekend or holiday, value defines how to adjust actual maturity date	C
Leg Maturity Date	The date on which the leg's principal amount becomes due	M
Leg Maturity Date Adj Calendar	Regarding the maturity date, this specifies which dates are considered holidays	C
Leg Calc Per Adj Bus Day Conv	If a date defining the calculation period falls on a holiday, this adjusts the actual dates based on the definition of the input	C
Leg Calc Frequency	Calculation frequency, also known as the compounding frequency for compounded swaps	M
Leg Roll Conv	Describes the day of the month when the payment is made	C
Leg Calc Per Adj Calendar	Regarding the calculation period, this specifies which dates are considered holidays	C
Leg Stream Daycount	Defines how interest is accrued/calculated	M
Payment Stream Comp Method	If payments are made on one timeframe but calculations are made on a shorter timeframe, this describes how to compound interest	C
Payment Stream Business Day Conv	If cash flow pay or receive date falls on a weekend or holiday, value defines actual date payment is made	C
Payment Stream Frequency	Frequency at which payments are made	M
Payment Stream Relative To	Specifies the anchor date when the payment date is relative to that date	C
Payment Stream First Date	The unadjusted first payment date	C
Payment Stream Last Regular Date	The unadjusted last regular payment date	C
Payment Leg Calendar	Regarding dates on which cash flow payments/receipts are scheduled, this specifies which dates are considered holidays	C

M = mandatory C = conditional O = optional.

Field name	Description	Use
Leg Reset Date Bus Day Conv	Business day convention to apply to each reset date if the reset date falls on a holiday	C
Leg Reset Date Relative To	Specifies the anchor date when reset date is relative to that date	C
Leg Reset Frequency	Frequency at which resets occur. If the Leg Reset Frequency is greater than the calculation per frequency, more than 1 reset date should be established for each calculation per frequency and some form of rate averaging is applicable	C
Leg Reset Fixing Date Offset	Specifies the fixing date relative to the reset date in terms of a business days offset	C
Leg Fixing Day Type	The type of days to use to find the fixing date (*i.e.,* business days, calendar days, etc.)	C
Leg Reset Date Calendar	Regarding reset dates, this specifies which dates are considered holidays	C
Leg Fixing Date Bus Day Conv	Business day convention to apply to each fixing date if the fixing date falls on a holiday	C
Leg Fixing Date Calendar	Regarding the fixing date, this specifies which dates are considered holidays	C
Fixed Leg Rate or Amount	Only populate if Leg1 is Type “Fixed”. This should be expressed in decimal form (*e.g.,* 4% should be input as .04)	C
Floating Leg Inflation Index	If leg is floating rate, this gives the index applicable to the floating rate	C
Floating Leg Spread	Describes if there is a spread (typically an add-on) applied to the coupon rate	C
Floating Leg Payment Inflation Lag	Number of business days after payment due date on which the payment is actually made	C
Floating Leg Payment Inflation Interpolation Method	The method used when calculating the inflation index level from multiple points. The most common is the linear method	C
Floating Leg Inflation Index Initial Level	Initial known index level for the first calculation period	C
Floating Leg Inflation Index Fallback Bond Ind	Indicates whether a fallback bond as defined in the 2006 International Swaps and Derivatives Association (ISDA) Inflation Derivatives Definitions, sections 1.3 and 1.8, is applicable or not. If not specified, the default value is “Y” (True/Yes)	O
Leg Pmt Sched Notional	Variable notional swap notional values	C
Leg Stub Type	Stubs apply to initial or ending periods that are shorter than the usual	C

M = mandatory C = conditional O = optional.

Field name	Description	Use
	interval between payments	
Leg Initial Stub Fixed Rate	The interest rate applicable to the Initial Stub Period in decimal form (*e.g.,* 4% should be input as ".04")	C
Leg Final Stub Fixed Rate	The interest rate applicable to the final stub period in decimal form (*e.g.,* 4% should be input as ".04")	C
Leg Initial Stub Floating Rate Index 1 Tenor	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.,* if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the first index	C
Leg Initial Stub Floating Rate Index 2 Tenor	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.,* if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the second index	C
Leg Final Stub Floating Rate Index 1 Tenor	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.,* if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the first index	C
Leg Final Stub Rate Floating Index 2 Tenor	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.,* if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the second index	C
Leg First Reg Per Start Date	If there is a beginning stub, this describes the date when the usual payment periods will begin	C
Leg Last Reg Per End Date	If there is an ending stub, this describes the date when the usual payment periods will end	C
Leg Accrued Interest (Coupon)	The net accrued coupon amount since the last payment in the leg currency. If reported by leg, indicate the associated stream (leg) description (*e.g.,* "FIXED/FLOAT," "FLOAT1/FLOAT2")	M
Profit/Loss	Profit/Loss resulting from changes in value due to changes in underlying curve movements or floating index rate resets. This should exclude impacts to NPVs from extraneous cash flows (price alignment interest, fees, and coupons)	M
Leg Coupon Amount	Coupon amount for T + 1 in the leg currency. This should reflect the net cash flow that will actually occur on the following business day. A negative number indicates payment was made	M
Leg Current Period Coupon Rate	If leg is a floating leg, this indicates the current rate used to calculate the next floating leg coupon in decimal form (*e.g.,* 4% should be input as ".04")	M
I01	Change in value in native currency if the relevant pricing curve is shifted up by 1 basis point	M
Dollar Value of Basis Point (DV01)	Change in value in native currency of the swap/swaption/floor/cap if relevant pricing curve is shifted up by 1 basis point. DV01 = "dollar" value of a basis point in currency (not percentage) terms, the change in fair value of the leg, transaction, position, or portfolio (as appropriate) commensurate with a 1 basis point (0.01 percent) instantaneous, hypothetical increase in the related zero-coupon curves. DV01 may refer	M

M = mandatory C = conditional O = optional.

Field name	Description	Use
	to non-dollar currencies and related curves. From the DCO's point of view: positive DV01 = profit/gain resulting from 1 basis point increase, negative DV01 = loss resulting from 1 basis point increase	
Net Cash Flow	Net cash flow recognized on report date (with actual settlements occurring according to the currency's settlement conventions). *E.g.,* profit/loss, price alignment interest, cash payments (fees, coupons, etc.)	M
Net Present Value	Net present value (NPV) of all positions by currency	M
Present Value Of Other Payments	Includes the present value of any upfront and/or final/settlement payments that will be settled after the report date. Only include amounts that are affecting the NPV of current trades	M
Net Present Value Previous	Previous day's NPV by currency	C
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid	M
Universal or Unique) Swap Identifier	Universal (or Unique) Swap Identifier (USI) namespace and USI. Enter the USI Namespace and the USI separated by a pipe "|" character.	C
Stream Initial Exchange	Amount of any exchange of cash flow at initiation of trade being cleared	C
Stream Initial Exchange Date	Date that the initial exchange is set to occur	C
Stream Final Exchange	Amount of any exchange of cash flow at maturity of trade	C
Stream Final Exchange Date	Date that the final exchange is set to occur	C
Other Payments	Includes any upfront and/or final/settlement payments made/received for the trade date. (Indicate gross pay/collect amounts.)	C
Trade Date	Actual trade date for each position record (including specifically, the cleared date and the trade date)	M
Event Description	Description for each position record	C
EQUITY CROSS MARGIN (DAILY POSITION REPORTING)		
Exchange Security Identifier	Contract code issued by the exchange	M
Clearing Security Identifier	Code assigned by the DCO for a particular contract	M
Product Type	Indicates the type of product the security is associated with	C
Security Type	Indicates type of security	M
Maturity Month Year	Month and year of the maturity	M

M = mandatory C = conditional O = optional.

Field name	Description	Use
Maturity Date	The date on which the principal amount becomes due. For NDFs, this represents the fixing date of the contract	C
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Security Description	Used to provide a textual description of a financial instrument	M
Position (Long)	Long position size. If a position is quoted in a unit of measure (UOM) different from the contract, specify the UOM. If a position is measured in a currency, specify the currency	M
Position (Short)	Short position size. If a position is quoted in a UOM different from the contract, specify the UOM. If a position is measured in a currency, specify the currency	M
Settlement Price/ Currency	Settlement price, prior settlement price, settlement currency, and final settlement date	M
Option Strike Price	Option strike price	C
Option Put/Call Indicator	Option type	C
Underlying Exchange Commodity Code	Underlying Contract code issued by the exchange	C
Underlying Clearing Commodity Code	Registered commodity clearing identifier. The code is for the contract as if it were traded in the form it is cleared. For example, if the contract was traded as a spread but cleared as an outright, the outright symbol should be used	C
Underlying Product Type	Indicates the type of product the security is associated with	C
Underlying Security Type	Indicator which identifies the underlying derivative	C
Underlying Maturity Month Year	Month and year of the maturity	C
Underlying Maturity Date	The date on which the principal amount becomes due	C
Underlying Asset Class	The underlying broad asset category for assessing risk exposure	C
Underlying Asset Subclass	The subcategory description of the asset class	C
Underlying Asset Type	Provides a more specific description of the asset subclass	C

M = mandatory C = conditional O = optional.

Field name	Description	Use
Underlying Settlement Price/ Currency	Settlement price, prior settlement price, settlement currency, and final settlement date	C

M = mandatory C = conditional O = optional.

C. Risk Metric Ladder Reporting

Field name	Description	Use
COMMON FIELDS (RISK METRIC LADDER REPORTING)		
Total Message Count	The total number of reports included in the file	M
FIXML Message Type	FIXML account summary report type	M
Sender ID	The CFTC-issued DCO identifier	M
To ID	Indicate “CFTC”	M
Message Transmit Datetime	The date and time the file is transmitted	M
Report ID	A unique identifier assigned by the CFTC to each clearing member report	M
Report Date	The business date of the information being reported	M
Base Currency	Base currency referenced throughout report; provide exchange rate against this currency	M
Report Time (Message Create Time)	The report “as of” or information cut-off time	M
Message Event	The event source being reported	M
Ladder Indicator	Indicator that identifies the type of risk metric ladder	M
DCO Identifier	CFTC-assigned identifier for a DCO	M
Clearing Participant Identifier	DCO-assigned identifier for a particular clearing member	M
Clearing Participant Name	The name of the clearing member	M
Fund Segregation Type	Clearing fund segregation type	M
Clearing Participant LEI	LEI for a particular clearing member	M
Clearing Participant LEI Name	The LEI name associated with the clearing member LEI	M
Customer Identifier	Proprietary identifier for a particular customer position account	C
Customer Name	The name associated with the customer position identifier	C

M = mandatory C = conditional O = optional.

Field name	Description	Use
Customer Account Type	Type of account used for reporting	C
Customer LEI	LEI for a particular customer; provide if available	C
Customer LEI Name	The LEI name associated with the customer position LEI	C
Unique Margin Identifier	A single field that uniquely identifies the margin account. This field us used to identify associated positions	C
DELTA LADDER (DAILY REPORTING)		
Currency	ISO 4217 currency code	M
FX Rate	Rate used to convert the currency to USD	M
Curve Name	Name of the reference curve	M
Tenor	Number of days from the report date	M
Sensitivity	Theoretical profit and loss with a single upward basis point shift	M
GAMMA LADDER (DAILY REPORTING)		
Currency	ISO 4217 currency code	M
FX Rate	Rate used to convert the currency to USD	M
Curve Name	Name of the reference curve	M
Tenor	Number of days from the report date	M
Sensitivity	Theoretical profit and loss with a single upward basis point shift	M
VEGA LADDER (DAILY REPORTING)		
Currency	ISO 4217 currency code	M
FX Rate	Rate used to convert the currency to USD	M
Curve Name	Name of the reference curve	M
Tenor	Number of days from the report date	M
Sensitivity	Theoretical profit and loss with a single upward basis point shift	M

M = mandatory C = conditional O = optional.

D. Curve Reference Reporting

Field name	Description	Use
COMMON FIELDS (CURVE REFERENCE REPORTING)		
Total Message Count	The total number of reports included in the file	M
FIXML Message Type	FIXML account summary report type	M
Sender ID	The CFTC-issued DCO identifier	M
To ID	Indicate “CFTC”	M
Message Transmit	The date and time the file is transmitted	M

M = mandatory C = conditional O = optional.

Field name	Description	Use
Datetime		
Report ID	A unique identifier assigned by the CFTC to each clearing member report	M
Report Date	The business date of the information being reported	M
Base Currency	Base currency referenced throughout report; provide exchange rate against this currency	M
Report Time (Message Create Time)	The report "as of" or information cut-off time	M
Message Event	The event source being reported	M
DCO Identifier	CFTC-assigned identifier for a DCO	M
Currency Curve (Daily Reporting)		
Curve	Reference curve name	M
Currency	ISO 4217 currency code	M
Maturity Date	The date on which the principal amount becomes due	M
Par Rate	Rate such that the maturity will pay in order to sell at par today	M
Zero Rate Curve (Daily Reporting)		
Currency	ISO 4217 currency code	M
Curve	Reference curve name	M
Maturity Date	The date on which the principal amount becomes due	M
Offset	The difference in days between the maturity date and reporting date	M
Accrual Factor	The difference in years between the maturity date and reporting date	M
Discount Factor	Value used to compute the present value of future cash flows values	M
Zero Rate	Averages of the one-period forward rates up to their maturity	M

M = mandatory C = conditional O = optional.

E. Backtesting Reporting

Field name	Description	Use
Common Fields (Backtesting Reporting)		
Total Message Count	The total number of reports included in the file	M
FIXML Message Type	FIXML account summary report type	M

M = mandatory C = conditional O = optional.

Field name	Description	Use
Sender ID	The CFTC-issued DCO identifier	M
To ID	Indicate “CFTC”	M
Message Transmit Datetime	The date and time the file is transmitted	M
Report ID	A unique identifier assigned by the CFTC to each clearing member report	M
Report Date	The business date of the information being reported	M
Base Currency	Base currency referenced throughout report; provide exchange rate against this currency	M
Report Time (Message Create Time)	The report “as of” or information cut-off time	M
Message Event	The event source being reported	M
Breach Indicator	Indicates the breach file	M
DCO Identifier	CFTC-assigned identifier for a DCO	M
Clearing Participant Identifier	DCO-assigned identifier for a particular clearing member	M
Clearing Participant Name	The name of the clearing member	M
Fund Segregation Type	Clearing fund segregation type	M
Clearing Participant LEI	LEI for a particular clearing member	M
Clearing Participant LEI Name	The LEI name associated with the clearing member LEI	M
Customer Identifier	Proprietary identifier for a particular customer position account	C
Customer Name	The name associated with the customer position identifier	C
Customer Account Type	Type of account used for reporting	C
Customer LEI	LEI for a particular customer; provide if available	C
Customer LEI Name	The LEI name associated with the customer position LEI	C
Unique Margin	A single field that uniquely identifies the margin account. This field us used	C

M = mandatory C = conditional O = optional.

Field name	Description	Use
Identifier	to identify associated positions	
BREACH DETAILS (DAILY REPORTING)		
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons	M
Backtesting Metric	Indicates the type of profit and loss calculation used for backtesting: • VM—Variation Margin • STATIC—Static Portfolio P/L (Clean P/L) • DIRTY—Dirty P/L • MTMA—Mark to Market P/L • MTMO—Mark to Model P/L • OTHER	M
Backtesting Metric Amount	Amount on the positions for which Initial Margin is computed	M
Breach Amount	Difference between the Initial Margin and Backtesting Metric Amount	M
Margin Period of Risk	Holding period for which the Backtesting Metric is calculated in days	M
BREACH SUMMARY (DAILY REPORTING)		
Total Instance	Total number of testing dates for the account	M
Number of Breaches	Total number of breaches in the testing period	M
Test Range Start	Beginning date of the test	M
Test Range End	End date of the test	M

M = mandatory C = conditional O = optional.

F. Manifest Reporting

Field name	Description	Use
MANIFEST REPORTING		
Total Message Count	The total number of reports included in the file	M
FIXML Message Type	FIXML account summary report type	M
Sender ID	The CFTC-issued DCO identifier	M
To ID	Indicate “CFTC”	M
Message Transmit Datetime	The date and time the file is transmitted	M

M = mandatory C = conditional O = optional.

Field name	Description	Use
Filenames	List of files to be sent	M

M = mandatory C = conditional O = optional.

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