

Commodity Futures Trading Commission

§ 38.3

Core Principle 8 of section 5a(d) of the Act: *RECORDKEEPING—The board of trade shall maintain records of all activities related to the business of the derivatives transaction execution facility in a form and manner acceptable to the Commission for a period of 5 years.*

Section 1.31 of this chapter governs record-keeping obligations under the Act and the Commission's regulations thereunder. In order to provide broad flexible performance standards for recordkeeping, §1.31 was updated and amended by the Commission in 1999. Accordingly, §1.31 itself establishes the guidance regarding the form and manner for keeping records.

Core Principle 9 of section 5a(d) of the Act: *ANTITRUST CONSIDERATIONS—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall endeavor to avoid—(A) adopting any rules or taking any actions that result in any unreasonable restraint of trade; or (B) imposing any material anti-competitive burden on trading on the derivatives transaction execution facility.*

A board of trade seeking to operate as a registered derivatives transaction execution facility may request that the Commission consider under the provisions of section 15(b) of the Act any of the board of trade's rules, which may be trading protocols or policies, and including both operational rules and the terms or conditions of products listed for trading, at the time it submits its registration application or thereafter. The Commission intends to apply section 15(b) of the Act to its consideration of issues under this core principle in a manner consistent with that previously applied to contract markets.

[66 FR 42271, Aug. 10, 2001, as amended at 71 FR 1964, Jan. 12, 2006]

PART 38—DESIGNATED CONTRACT MARKETS

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APPENDIX B TO PART 38—GUIDANCE ON, AND ACCEPTABLE PRACTICES IN, COMPLIANCE WITH CORE PRINCIPLES

AUTHORITY: 7 U.S.C. 2, 5, 6, 6c, 7 and 12a, as amended by Appendix E of Pub. L. 106-554, 114 Stat. 2763A-365.

SOURCE: 66 FR 42277, Aug. 10, 2001, unless otherwise noted.

§ 38.1 Scope.

The provisions of this Part 38 shall apply to every board of trade that has been designated or is applying to become designated as a contract market under Sections 5 and 6 of the Act. *Provided, however,* nothing in this provision affects the eligibility of designated contract markets to operate under the provisions of Parts 36 or 37 of this chapter.

[71 FR 1964, Jan. 12, 2006]

§ 38.2 Exemption.

Agreements, contracts, or transactions traded on a designated contract market under Section 5 of the Act, the contract market and the contract market's operator are exempt from all Commission regulations for such activity, except for the requirements of this Part 38 and §§1.3, 1.12(e), 1.31, 1.37(c)-(d), 1.38, 1.52, 1.59(d), 1.60, 1.63(c), 1.67, 33.10, Part 9, Parts 15 through 21, Part 40, Part 41 and Part 190 of this chapter, including any related definitions and cross-referenced sections.

[71 FR 1964, Jan. 12, 2006]

§ 38.3 Procedures for designation.

(a) *Application procedures.* (1) *Statutory (180-day) review procedures.* A board of trade desiring to be designated as a contract market shall file an application for designation with the Secretary of the Commission at its Washington, DC, headquarters. Except as provided under the 90-day review procedures described in paragraph (a)(2) of this section, the Commission will review the application for designation as a contract market pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Act. The Commission shall approve or deny the application or, if deemed appropriate, designate the applicant as a contract market subject to conditions.

(i) The applicant must demonstrate compliance with the criteria for designation of section 5(b) of the Act, the core principles for operation of section 5(d) of the Act and the provisions of this part 38.

(ii) The application must include the following:

(A) A copy of the applicant's rules (as defined in §40.1 of this chapter) and any