

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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AUTHORITY: 7 U.S.C. 2, 5, 6, 6c, 7, 7a–2 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 technical manuals, other guides or instructions for users of, or participants in, the market, including minimum financial standards for members or market participants;

(B) A description of the trading system, algorithm, security and access limitation procedures with a timeline for an order from input through settlement, and a copy of any system test procedures, tests conducted, test results and contingency or disaster recovery plans;

(C) A copy of any documents describing the applicant's legal status and governance structure, including governance fitness information;

(D) An executed or executable copy of any agreements or contracts entered into or to be entered into by the applicant, including partnership or limited liability company, third-party regulatory service, or member or user agreements, that enable or empower the applicant to comply with a designation criterion or core principle (final, executed copies of such documents must be submitted prior to designation);