

Commodity Futures Trading Commission

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Core Principle 17 of section 5(d) of the Act: *RECORDKEEPING—The board of trade shall maintain records of all activities related to the business of the contract market in a form and manner acceptable to the Commission for a period of 5 years.*

(a) *Application guidance.* [Reserved]

(b) *Acceptable practices.* Section 1.31 of this chapter governs recordkeeping 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 18 of section 5(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 restraints of trade; or (B) imposing any material anti-competitive burden on trading on the contract market.*

(a) *Application guidance.* An entity seeking designation as a contract market may request that the Commission consider under the provisions of section 15(b) of the Act any of the entity's rules, including trading protocols or policies, and including both operational rules and the terms or conditions of products listed for trading, at the time of designation 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.

(b) *Acceptable practices.* [Reserved]

[66 FR 42277, Aug. 10, 2001, as amended at 67 FR 62352, Oct. 7, 2002; 71 FR 1965, 1966, Jan. 12, 2006; 72 FR 6957, Feb. 14, 2007; 72 FR 65658, Nov. 23, 2007; 74 FR 18990, Apr. 27, 2009]

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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(d) of this chapter which is registered or deemed to be registered with the Commission as a derivatives clearing organization, is required to register as such with the Commission pursuant to section 5b(a) of the Act, or which voluntarily applies to register as such with the Commission pursuant to section 5b(b) or otherwise.

§ 39.2 Definitions.

For the purposes of this part,

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

Customer means a person trading in any commodity named in the definition of commodity in section 1a(9) of the Act or in §1.3 of this chapter, or in any swap as defined in section 1a(47) of the Act or in §1.3 of this chapter; *Provided, however*, an owner or holder of a

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house account as defined in this section shall not be deemed to be a customer within the meaning of section 4d of the Act, the regulations that implement sections 4d and 4f of the Act and §1.35, and such an owner or holder of such a house account shall otherwise be deemed to be a customer within the meaning of the Act and §§1.37 and 1.46 of this chapter and all other sections of these rules, regulations, and orders which do not implement sections 4d and 4f of the Act.

Customer account or customer origin means a clearing member account held on behalf of customers, as that term is defined in this section, and which is subject to section 4d(a) or section 4d(f) of the Act.

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 and orders. 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; and emergency contacts or persons who are responsible for business continuity or disaster recovery planning or program execution.

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

Systemically important derivatives clearing organization means a financial market utility that is a derivatives clearing organization registered under section 5b of the Act, which has been designated by the Financial Stability Oversight Council to be systemically important and for which the Commis-

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sion acts as the Supervisory Agency pursuant to section 803(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

§ 39.3 Procedures for registration.

(a) *Application procedures.* (1) An organization desiring to be registered as a derivatives clearing organization shall file electronically 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. The Commission may approve or deny the application or, if deemed appropriate, register the applicant as a derivatives clearing organization subject to conditions.

(2) *Application.* Any person seeking to register as a derivatives clearing organization, any applicant amending its pending application, or any registered derivatives clearing organization seeking to amend its order of registration (applicant), shall submit to the Commission a completed Form DCO, which shall include a cover sheet, all applicable exhibits, and any supplemental materials, including amendments thereto, as provided in the appendix to this part 39 (application). An applicant, when filing a Form DCO for purposes of amending its pending application or requesting an amendment to an existing registration, is only required to submit exhibits and updated information that are relevant to the requested amendment and are necessary to demonstrate compliance with the core principles affected by the requested amendment. 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.