

§ 39.3

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the Act or in §1.3 of this chapter; *Provided, however*, an owner or holder of a 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 Commission 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.

(3) *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 submit supplemental information in order for the Commission to process the application. The applicant shall file electronically such supplemental information with the Secretary of the Commission in the format and manner specified by the Commission.

(4) *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.

(5) *Public information.* The following sections of all applications to become a registered derivatives clearing organization will be public: first page of the Form DCO cover sheet, proposed rules, regulatory compliance chart, narrative summary of proposed clearing activities, documents establishing the applicant's legal status, documents setting forth the applicant's corporate and governance structure, and any other part of the application not covered by a request for confidential treatment, subject to §145.9 of this chapter.

(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 designation under section 6(a) of the Act that the application is materially incomplete and the running of the 180-day period 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 electronically 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) *Reinstatement of dormant registration.* Before listing or relisting products for clearing, a dormant registered 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.

(e) *Request for vacation of registration.* A registered derivatives clearing organization may vacate its registration under section 7 of the Act by filing electronically such a request with the Secretary of the Commission in the format and manner specified by the Commission. 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 entity was registered by the Commission.

(f) *Request for transfer of registration and open interest.* (1) In anticipation of a corporate change that will result in the transfer of all or substantially all of a derivatives clearing organization's assets to another legal entity, the derivatives clearing organization shall submit a request for approval to transfer the derivatives clearing organization's registration and positions comprising open interest for clearing and settlement.

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(2) *Timing of submission and other procedural requirements.* (i) The request shall be submitted no later than three months prior to the anticipated corporate change, or as otherwise permitted under § 39.19(c)(4)(viii)(C) of this part.

(ii) The derivatives clearing organization shall submit a request for transfer by filing electronically such a request with the Secretary of the Commission in the format and manner specified by the Commission.

(iii) The derivatives clearing organization shall submit a confirmation of change report pursuant to § 39.19(c)(4)(viii)(D) of this part.

(3) *Required information.* The request shall include the following:

(i) The underlying agreement that governs the corporate change;

(ii) A narrative description of the corporate change, including the reason for the change and its impact on the derivatives clearing organization's financial resources, governance, and operations, and its impact 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 thereunder;

(iv) The governing documents of the transferee, including but not limited to articles of incorporation and bylaws;

(v) The transferee's rules marked to show changes from the current rules of the derivatives clearing organization;

(vi) A list of products for which the derivatives clearing organization requests transfer of open interest;

(vii) A representation by the derivatives clearing organization that it is in compliance with the Act, including the core principles applicable to derivatives clearing organizations, and the Commission's regulations thereunder; and

(viii) A representation by the transferee that it understands that the derivatives clearing organization is a regulated entity that must comply with the Act, including the core principles applicable to derivatives clearing organiza-

tions, and the Commission's regulations thereunder, in order to maintain its registration as a derivatives clearing organization; and further, that the transferee will continue to comply with all self-regulatory requirements applicable to a derivatives clearing organization under the Act and the Commission's regulations thereunder.

(4) *Commission determination.* The Commission will review a request as soon as practicable, and based on the Commission's determination as to the transferee's ability to continue to operate the derivatives clearing organization in compliance with the Act and the Commission's regulations thereunder, such request will be approved or denied pursuant to a Commission order.

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

(a) *Request for approval of rules.* An applicant for registration, or 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) *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