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20. Attach as **Exhibit T**, a list of the name of the clearing organization(s) that will be clearing the Applicant's trades, and a representation that clearing members of that organization will be guaranteeing such trades.

21. Attach as **Exhibit U**, any information (described with particularity) included in the application that will be subject to a request for confidential treatment pursuant to § 145.9 of the Commission's regulations.

EXHIBITS –OPERATIONAL CAPABILITY

22. Attach as **Exhibit V**, information responsive to the Technology Questionnaire (link). This questionnaire focuses on information pertaining to the Applicant's program of risk analysis and oversight. Main topic areas include: information security; business continuity-disaster recovery planning and resources; capacity and performance planning; systems operations; systems development and quality assurance; and physical security and environmental controls.

[77 FR 36709, June 19, 2012]

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

1. This appendix provides guidance on complying with core principles, both initially and on an ongoing basis, to obtain and maintain designation under section 5(d) of the Act and this part 38. Where provided, guidance is set forth in paragraph (a) following the relevant heading and can be used to demonstrate to the Commission compliance with the selected requirements of a core principle, under §§38.3 and 38.5 of this part. The guidance for the core principle is illustrative only of the types of matters a designated contract market may address, as applicable, and is not intended to be used as a mandatory checklist. Addressing the issues set forth in this appendix would help the Commission in its consideration of whether the designated contract market is in compliance with the selected requirements of a core principle; provided however, that the guidance is not intended to diminish or replace, in any event, the obligations and requirements of applicants and designated contract markets to comply with the regulations provided under this part.

2. Where provided, acceptable practices meeting selected requirements of core principles are set forth in paragraph (b) following guidance. Designated contract markets that follow specific practices outlined in the acceptable practices for a core principle in this appendix will meet the selected requirements of the applicable core principle; provided however, that the acceptable practice is not intended to diminish or replace, in any event, the obligations and requirements of applicants and designated contract markets to comply with the regulations provided under this part 38. The acceptable practices are for illustrative purposes only and do not state the exclusive means for satisfying a core principle.

Core Principle 1 of section 5(d) of the Act: DESIGNATION AS CONTRACT MARKET.—(A) IN GENERAL.—To be designated, and maintain a designation, as a contract market, a board of trade shall comply with—

(i) Any core principle described in this subsection; and

(ii) Any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

(B) REASONABLE DISCRETION OF CONTRACT MARKET.—Unless otherwise determined by the Commission by rule or regulation, a board of trade described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles described in this subsection.

(a) *Guidance*. [Reserved]

(b) *Acceptable Practices*. [Reserved]

Core Principle 2 of section 5(d) of the Act: COMPLIANCE WITH RULES—(A) IN GENERAL.—The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including—

(i) Access requirements;

(ii) The terms and conditions of any contracts to be traded on the contract market; and

(iii) Rules prohibiting abusive trade practices on the contract market.

(B) CAPACITY OF CONTRACT MARKET.—The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the contract market.

(C) REQUIREMENT OF RULES.—The rules of the contract market shall provide the board of trade with the ability and authority to obtain any necessary information to perform any function described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.

(a) *Guidance*—(1) *Investigations and investigation reports—Warning letters.* The rules of a designated contract market may authorize compliance staff to issue a warning letter to a person or entity under investigation or to recommend that a disciplinary panel take such an action.

(2) *Additional rules required.* A designated contract market should adopt and enforce any additional rules that it believes are necessary to comply with the requirements of subpart C of this chapter

(b) *Acceptable Practices.* [Reserved]

Core Principle 3 of section 5(d) of the Act: CONTRACTS NOT READILY SUBJECT TO MANIPULATION.—The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

(a) *Guidance.* (1) Designated contract markets may list new products for trading by self-certification under §40.2 of this chapter or may submit products for Commission approval under §40.3 of this chapter.

(2) Guidance in appendix C to this part may be used as guidance in meeting this core principle for both new products listings and existing listed contracts.

(b) *Acceptable Practices.* [Reserved]

Core Principle 4 of section 5(d) of the Act: PREVENTION OF MARKET DISRUPTION.—The board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including—

(A) Methods for conducting real-time monitoring of trading; and

(B) Comprehensive and accurate trade reconstructions.

(a) *Guidance.* The detection and prevention of market manipulation, disruptions, and distortions should be incorporated into the design of programs for monitoring trading activity. Monitoring of intraday trading should include the capacity to detect developing market anomalies, including abnormal price movements and unusual trading volumes, and position-limit violations. The designated contract market should have rules in place that allow it broad powers to intervene to prevent or reduce market disruptions. Once a threatened or actual disruption is detected, the designated contract market should take steps to prevent the disruption or reduce its severity.

(2) *Additional rules required.* A designated contract market should adopt and enforce any additional rules that it believes are necessary to comply with the requirements of subpart E of this part.

(b) *Acceptable Practices*—(1) *General Requirements.* Real-time monitoring for market anomalies and position-limit violations are the most effective, but the designated contract market may also demonstrate that it has an acceptable program if some of the monitoring is accomplished on a T+1 basis. An acceptable program must include automated trading alerts to detect market anomalies and position-limit violations as they develop and before market disruptions occur or become more serious. In some cases, a designated contract market may demonstrate that its manual processes are effective.

(2) *Physical-delivery contracts.* For physical-delivery contracts, the designated contract market must demonstrate that it is monitoring the adequacy and availability of the deliverable supply, which, if such information is available, includes the size and ownership of those supplies and whether such supplies are likely to be available to short traders and saleable by long traders at the market value of those supplies under normal cash marketing conditions. Further, for physical-delivery contracts, the designated contract market must continually monitor the appropriateness of a contract's terms and conditions, including the delivery instrument, the delivery locations and location differentials, and the commodity characteristics and related differentials. The designated contract market must demonstrate that it is making a good-faith effort to resolve conditions that are interfering with convergence of its physical-delivery contract to the price of the underlying commodity or causing price distortions or market disruptions, including, when appropriate, changes to contract terms.

(3) *Cash-settled contracts.* At a minimum, an acceptable program for monitoring cash-settled contracts must include access, either directly or through an information-sharing agreement, to traders' positions and transactions in the reference market for traders of a significant size in the designated contract market near the settlement of the contract.

(4) *Ability to obtain information.* With respect to the designated contract market's ability to obtain information, a designated contract market may limit the application of the requirement to keep and provide such records only to those that are reportable under its large-trader reporting system or otherwise hold substantial positions.

(5) *Risk controls for trading.* An acceptable program for preventing market disruptions must demonstrate appropriate trade risk controls, in addition to pauses and halts. Such controls must be adapted to the unique characteristics of the markets to which they apply and must be designed to avoid market disruptions without unduly interfering with that market's price discovery function. The designated contract market may choose from among controls that include: pre-trade limits on order size, price collars or bands around the current price, message throttles, and daily price limits, or design other types

of controls. Within the specific array of controls that are selected, the designated contract market also must set the parameters for those controls, so long as the types of controls and their specific parameters are reasonably likely to serve the purpose of preventing market disruptions and price distortions. If a contract is linked to, or is a substitute for, other contracts, either listed on its market or on other trading venues, the designated contract market must, to the extent practicable, coordinate its risk controls with any similar controls placed on those other contracts. If a contract is based on the price of an equity security or the level of an equity index, such risk controls must, to the extent practicable, be coordinated with any similar controls placed on national security exchanges.

Core Principle 5 of section 5(d) of the Act: POSITION LIMITATIONS OR ACCOUNTABILITY—(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion (especially during trading in the delivery month), the board of trade shall adopt for each contract of the board of trade, as is necessary and appropriate, position limitations or position accountability for speculators.

(B) MAXIMUM ALLOWABLE POSITION LIMITATION.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the board of trade shall set the position limitation of the board of trade at a level not higher than the position limitation established by the Commission.

(a) *Guidance.* [Reserved]

(b) *Acceptable Practices.* [Reserved]

Core Principle 6 of section 5(d) of the Act: EMERGENCY AUTHORITY—The board of trade, in consultation or cooperation with the Commission, shall adopt rules to provide for the exercise of emergency authority, as is necessary and appropriate, including the authority—

(A) To liquidate or transfer open positions in any contract;

(B) To suspend or curtail trading in any contract; and

(C) To require market participants in any contract to meet special margin requirements.

(a) *Guidance.* In consultation and cooperation with the Commission, a designated contract market should have the authority to intervene as necessary to maintain markets with fair and orderly trading and to prevent or address manipulation or disruptive trading practices, whether the need for intervention arises exclusively from the DCM's market or as part of a coordinated, cross-market intervention. DCM rules should include procedures and guidelines to avoid conflicts of interest in accordance with the provisions of §40.9 of this chapter, and include alternate lines of communication and approval procedures to address emergencies associated with real-time events. To address perceived market threats, the designated contract market should have rules that allow it to take certain actions in the event of an emergency, as defined in §40.1(h) of this chapter, including: imposing or modifying position limits, price limits, and intraday market restrictions; imposing special margin requirements; ordering the liquidation or transfer of open positions in any contract; ordering the fixing of a settlement price; extending or shortening the expiration date or the trading hours; suspending or curtailing trading in any contract; transferring customer contracts and the margin or altering any contract's settlement terms or conditions; and, where applicable, providing for the carrying out of such actions through its agreements with its third-party provider of clearing or regulatory services. In situations where a contract is fungible with a contract on another platform, emergency action to liquidate or transfer open interest must be as directed, or agreed to, by the Commission or the Commission's staff. The DCM has the authority to independently respond to emergencies in an effective and timely manner consistent with the nature of the emergency, as long as all such actions taken by the DCM are made in good faith to protect the integrity of the markets. The Commission should be notified promptly of the DCM's exercise of emergency action, explaining how conflicts of interest were minimized, including the extent to which the DCM considered the effect of its emergency action on the underlying markets and on markets that are linked or referenced to the contract market and similar markets on other trading venues. Information on all regulatory actions carried out pursuant to a DCM's emergency authority should be included in a timely submission of a certified rule pursuant to part 40 of this chapter.

(b) *Acceptable Practices.* A designated contract market must have procedures and guidelines for decision-making and implementation of emergency intervention in the market. At a minimum, the DCM must have the authority to liquidate or transfer open positions in the market, suspend or curtail trading in any contract, and require market participants in any contract to meet special margin requirements. In situations where a contract is fungible with a contract on another platform, emergency action to liquidate or transfer open interest must be directed, or agreed to, by the Commission or the Commission's staff. The DCM must promptly notify the Commission of the exercise of its emergency authority, documenting its decision-making process, including how conflicts of interest were minimized, and the reasons for using its emergency authority. The DCM must also have rules that allow it to take such market actions as may be directed by the Commission.

Core Principle 7 of section 5(d) of the Act: AVAILABILITY OF GENERAL INFORMATION.—The board of trade shall make available to market authorities, market participants, and the public accurate information concerning—

(A) The terms and conditions of the contracts of the contract market; and

(B)(i) The rules, regulations, and mechanisms for executing transactions on or through the facilities of the contract market; and

(ii) The rules and specifications describing the operation of the contract market's—

(I) Electronic matching platform; or

(II) Trade execution facility.

(a) *Guidance.* [Reserved]

(b) *Acceptable Practices.* [Reserved]

Core Principle 8 of section 5(d) of the Act: DAILY PUBLICATION OF TRADING INFORMATION.—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

(a) *Guidance.* [Reserved]

(b) *Acceptable Practices.* [Reserved]

Core Principle 9 of section 5(d) of the Act: EXECUTION OF TRANSACTIONS.—''(A) IN GENERAL.—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade.

(B) RULES.—The rules of the board of trade may authorize, for bona fide business purposes—

(i) Transfer trades or office trades;

(ii) An exchange of—

(I) Futures in connection with a cash commodity transaction;

(II) Futures for cash commodities; or

(III) Futures for swaps; or

(iii) A futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

(a) *Guidance.* [Reserved]

(b) *Acceptable Practices.* [Reserved]

Core Principle 10 of section 5(d) of the Act: TRADE INFORMATION.—The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information—

(A) To assist in the prevention of customer and market abuses; and

(B) To provide evidence of any violations of the rules of the contract market.

(a) *Guidance.* [Reserved]

(b) *Acceptable Practices.* [Reserved]

Core Principle 11 of section 5(d) of the Act: FINANCIAL INTEGRITY OF TRANSACTIONS.—The board of trade shall establish and enforce—

(A) Rules and procedures for ensuring the financial integrity of transactions entered into on or through the facilities of the contract market (including the clearance and settlement of the transactions with a derivatives clearing organization); and

(B) Rules to ensure—

(i) The financial integrity of any—

(I) Futures commission merchant; and

(II) Introducing broker; and

(ii) The protection of customer funds.

(a) *Guidance.* [Reserved]

(b) *Acceptable Practices.* [Reserved]

Core Principle 12 of section 5(d) of the Act: PROTECTION OF MARKETS AND MARKET PARTICIPANTS—The board of trade shall establish and enforce rules—

(A) To protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant; and

(B) To promote fair and equitable trading on the contract market.

(a) *Guidance.* [Reserved]

(b) *Acceptable Practices.* [Reserved]

Core Principle 13 of section 5(d) of the Act: DISCIPLINARY PROCEDURES.—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.

(a) *Guidance*—(1) *Notice of charges.* If the rules of the designated contract market so provide, a notice may also advise: (i) That failure to request a hearing within the period prescribed in the notice, except for good cause, may be deemed a waiver of the right to a hearing; and (ii) That failure to answer or to deny expressly a charge may be deemed to be an admission of such charge.

(2) *Admission or failure to deny charges.* The rules of a designated contract market may provide that if a respondent admits or fails to deny any of the charges, a disciplinary panel may find that the violations alleged in the notice of charges for which the respondent admitted or failed to deny any of the charges have been committed. If the designated contract market's rules so provide, then:

(i) The disciplinary panel should impose a sanction for each violation found to have been committed;

(ii) The disciplinary panel should promptly notify the respondent in writing of any sanction to be imposed pursuant to paragraph (2)(i) of this section and shall advise the respondent that it may request a hearing on

such sanction within the period of time, which shall be stated in the notice;

(iii) The rules of a designated contract market may provide that if a respondent fails to request a hearing within the period of time stated in the notice, the respondent will be deemed to have accepted the sanction.

(3) *Settlement offers.* (i) The rules of a designated contract market may permit a respondent to submit a written offer of settlement at any time after an investigation report is completed. The disciplinary panel presiding over the matter may accept the offer of settlement, but may not alter the terms of a settlement offer unless the respondent agrees.

(ii) The rules of a designated contract market may provide that, in its discretion, a disciplinary panel may permit the respondent to accept a sanction without either admitting or denying the rule violations upon which the sanction is based.

(iii) If an offer of settlement is accepted, the panel accepting the offer should issue a written decision specifying the rule violations it has reason to believe were committed, including the basis or reasons for the panel's conclusions, and any sanction to be imposed, which should include full customer restitution where customer harm is demonstrated, except where the amount of restitution and to whom it should be provided cannot be reasonably determined. If an offer of settlement is accepted without the agreement of the enforcement staff, the decision should adequately support the disciplinary panel's acceptance of the settlement. Where applicable, the decision should also include a statement that the respondent has accepted the sanctions imposed without either admitting or denying the rule violations.

(iv) The respondent may withdraw his or her offer of settlement at any time before final acceptance by a disciplinary panel. If an offer is withdrawn after submission, or is rejected by a disciplinary panel, the respondent should not be deemed to have made any admissions by reason of the offer of settlement and should not be otherwise prejudiced by having submitted the offer of settlement.

(4) *Hearings.* The rules of a designated contract market may provide that a sanction may be summarily imposed upon any person within its jurisdiction whose actions impede the progress of a hearing.

(5) *Right to appeal.* The rules of a designated contract market may permit the parties to a proceeding to appeal promptly an adverse decision of a disciplinary panel in all or in certain classes of cases. Such rules may require a party's notice of appeal to be in writing and to specify the findings, conclusions, or sanctions to which objection are taken. If the rules of a designated contract market permit appeals, then both the respondent and the enforcement staff should have the opportunity to appeal and the designated contract market should provide for the following:

(i) The designated contract market should establish an appellate panel that should be authorized to hear appeals of respondents. In addition, the rules of a designated contract market may provide that the appellate panel may, on its own initiative, order review of a decision by a disciplinary panel within a reasonable period of time after the decision has been rendered.

(ii) The composition of the appellate panel should be consistent with the requirements set forth in part 40 of this chapter and paragraph (4) of the acceptable practices for Core Principle 16, and should not include any members of the designated contract market's compliance staff, or any person involved in adjudicating any other stage of the same proceeding. The rules of a designated contract market should provide for the appeal proceeding to be conducted before all of the members of the appellate panel or a panel thereof.

(iii) Except for good cause shown, the appeal or review should be conducted solely on the record before the disciplinary panel, the written exceptions filed by the parties, and the oral or written arguments of the parties.

(iv) Promptly following the appeal or review proceeding, the appellate panel should issue a written decision and should provide a copy to the respondent. The decision issued by the appellate panel should adhere to all the requirements of §38.708 of this part, to the extent that a different conclusion is reached from that issued by the disciplinary panel.

(6) *Summary fines for violations of rules regarding timely submission of records, decorum, or other similar activities.* A designated contract market may adopt a summary fine schedule for violations of rules relating to the timely submission of accurate records required for clearing or verifying each day's transactions, decorum, attire, or other similar activities. A designated contract market may permit its compliance staff, or a designated panel of contract market officials, to summarily impose minor sanctions against persons within the designated contract market's jurisdiction for violating such rules. A designated contract market's summary fine schedule may allow for warning letters to be issued for first-time violations or violators. If adopted, a summary fine schedule should provide for progressively larger fines for recurring violations.

(7) *Emergency disciplinary actions.* (i) A designated contract market may impose a sanction, including suspension, or take other summary action against a person or entity subject to its jurisdiction upon a reasonable belief that such immediate action is necessary to protect the best interest of the marketplace.

(ii) Any emergency disciplinary action should be taken in accordance with a designated contract market's procedures that provide for the following:

(A) If practicable, a respondent should be served with a notice before the action is taken, or otherwise at the earliest possible opportunity. The notice should state the action, briefly state the reasons for the action, and state the effective time and date, and the duration of the action.

(B) The respondent should have the right to be represented by legal counsel or any other representative of its choosing in all proceedings subsequent to the emergency action taken. The respondent should be given the opportunity for a hearing as soon as reasonably practicable and the hearing should be conducted before the disciplinary panel pursuant to the requirements of §38.707 of this part.

(C) Promptly following the hearing provided for in this rule, the designated contract market should render a written decision based upon the weight of the evidence contained in the record of the proceeding and should provide a copy to the respondent. The decision should include a description of the summary action taken; the reasons for the summary action; a summary of the evidence produced at the hearing; a statement of findings and conclusions; a determination that the summary action should be affirmed, modified, or reversed; and a declaration of any action to be taken pursuant to the determination, and the effective date and duration of such action.

(b) *Acceptable Practices.* [Reserved]

Core Principle 14 of section 5(d) of the Act: DISPUTE RESOLUTION.—The board of trade shall establish and enforce rules regarding, and provide facilities for alternative dispute resolution as appropriate for, market participants and any market intermediaries.

(a) *Guidance.* A designated contract market should provide customer dispute resolution procedures that are: appropriate to the nature of the market; fair and equitable; and available on a voluntary basis, either directly or through another self-regulatory organization, to customers that are non-eligible contract participants.

(b) *Acceptable Practices.*

(1) *Fair and equitable procedure.* Every contract market shall provide customer dispute resolution procedures that are fair and equitable. An acceptable customer dispute resolution mechanism would:

(i) Provide the customer with an opportunity to have his or her claim decided by an objective and impartial decisionmaker;

(ii) Provide each party with the right to be represented by counsel at the commencement of the procedure, at the party's own expense;

(iii) Provide each party with adequate notice of the claims presented against such party, an opportunity to be heard on all claims, defenses and permitted counterclaims, and an opportunity for a prompt hearing;

(iv) Authorize prompt, written, final settlement awards that are not subject to appeal within the designated contract market; and

(v) Notify the parties of the fees and costs that may be assessed.

(2) *Voluntary Procedures.* The use of dispute settlement procedures shall be voluntary for customers other than eligible contract participants as defined in section 1a(18) of the Dodd-Frank Act, and may permit counterclaims as provided in §166.5 of this chapter.

(3) *Member-to-Member Procedures.* If the designated contract market also provides procedures for the resolution of disputes that do not involve customers (i.e., member-to-member disputes), the procedures for resolving such disputes must be independent of and shall not interfere with or delay the resolution of customers' claims or grievances.

(4) *Delegation.* A designated contract market may delegate to another self-regulatory organization or to a registered futures association its responsibility to provide for customer dispute resolution mechanisms, provided, however, that in the event of such delegation, the designated contract market shall in all respects treat any decision issued by such other organization or association with respect to such dispute as if the decision were its own, including providing for the appropriate enforcement of any award issued against a delinquent member.

Core Principle 15 of section 5(d) of the Act: GOVERNANCE FITNESS STANDARDS.—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other person with direct access to the facility (including any party affiliated with any person described in this paragraph).

(a) *Guidance.* (1) A designated contract market should have appropriate eligibility criteria for the categories of persons set forth in the Core Principle that should include standards for fitness and for the collection and verification of information supporting compliance with such standards. Minimum standards of fitness for persons who have member voting privileges, governing obligations or responsibilities, or who exercise disciplinary authority are those bases for refusal to register a person under section 8a(2) of the Act. In addition, persons who have governing obligations or responsibilities, or who exercise disciplinary authority, should not have a significant history of serious disciplinary offenses, such as those that would be disqualifying under §1.63 of this chapter. Members with trading privileges but having no, or only nominal, equity,

in the facility and non-member market participants who are not intermediated and do not have these privileges, obligations, responsibilities or disciplinary authority could satisfy minimum fitness standards by meeting the standards that they must meet to qualify as a ''market participant.'' Natural persons who directly or indirectly have greater than a ten percent ownership interest in a designated contract market should meet the fitness standards applicable to members with voting rights.

(2) The Commission believes that such standards should include providing the Commission with fitness information for such persons, whether registration information, certification to the fitness of such persons, an affidavit of such persons' fitness by the contract market's counsel or other information substantiating the fitness of such persons. If a contract market provides certification of the fitness of such a person, the Commission believes that such certification should be based on verified information that the person is fit to be in his or her position.

(b) *Applicable Practices.* [Reserved]

Core Principle 16 of section 5(d) of the Act: CONFLICTS OF INTEREST.—The board of trade shall establish and enforce rules—

(A) to minimize conflicts of interest in the decisionmaking process of the contract market; and

(B) to establish a process for resolving conflicts of interest described in subparagraph (A).

(a) *Guidance.* The means to address conflicts of interest in decisionmaking of a contract market should include methods to ascertain the presence of conflicts of interest and to make decisions in the event of such a conflict. In addition, the Commission believes that the contract market should provide for appropriate limitations on the use or disclosure of material non-public information gained through the performance of official duties by board members, committee members and contract market employees or gained through an ownership interest in the contract market.

(b) *Acceptable Practices.* All designated contract markets (''DCMs'' or ''contract markets'') bear special responsibility to regulate effectively, impartially, and with due consideration of the public interest, as provided for in section 3 of the Act. Under Core Principle 15, they are also required to minimize conflicts of interest in their decisionmaking processes. To comply with this Core Principle, contract markets should be particularly vigilant for such conflicts between and among any of their self-regulatory responsibilities, their commercial interests, and the several interests of their management, members, owners, customers and market participants, other industry participants, and other constituencies. Acceptable practices for minimizing conflicts of interest shall include the following elements:

(1) Board composition for contract markets

(i) At least thirty-five percent of the directors on a contract market's board of directors shall be public directors; and

(ii) The executive committees (or similarly empowered bodies) shall be at least thirty-five percent public.

(2) Public director

(i) To qualify as a public director of a contract market, an individual must first be found, by the board of directors, on the record, to have no material relationship with the contract market. A ''material relationship'' is one that reasonably could affect the independent judgment or decisionmaking of the director.

(ii) In addition, a director shall be considered to have a ''material relationship'' with the contract market if any of the following circumstances exist:

(A) The director is an officer or employee of the contract market or an officer or employee of its affiliate. In this context, ''affiliate'' includes parents or subsidiaries of the contract market or entities that share a common parent with the contract market;

(B) The director is a member of the contract market, or an officer or director of a member. ''Member'' is defined according to section 1a(34) of the Commodity Exchange Act and Commission Regulation 1.3(q);

(C) The director, or a firm with which the director is an officer, director, or partner, receives more than $100,000 in combined annual payments from the contract market, or any affiliate of the contract market (as defined in subsection (2)(ii)(A)), for legal, accounting, or consulting services. Compensation for services as a director of the contract market or as a director of an affiliate of the contract market does not count toward the $100,000 payment limit, nor does deferred compensation for services prior to becoming a director, so long as such compensation is in no way contingent, conditioned, or revocable;

(D) Any of the relationships above apply to a member of the director's ''immediate family,'' i.e., spouse, parents, children and siblings.

(iii) All of the disqualifying circumstances described in subsection (2)(ii) shall be subject to a one-year look back.

(iv) A contract market's public directors may also serve as directors of the contract market's affiliate (as defined in subsection (2)(ii)(A)) if they otherwise meet the definition of public director in this section (2).

(v) A contract market shall disclose to the Commission which members of its board are public directors, and the basis for those determinations.

(3) Regulatory oversight committee

(i) A board of directors of any contract market shall establish a Regulatory Oversight Committee (''ROC'') as a standing committee, consisting of only public directors as defined in section (2), to assist it in minimizing actual and potential conflicts of interest. The ROC shall oversee the contract market's regulatory program on behalf of the board. The board shall delegate sufficient authority, dedicate sufficient resources, and allow sufficient time for the ROC to fulfill its mandate.

(ii) The ROC shall:

(A) Monitor the contract market's regulatory program for sufficiency, effectiveness, and independence;

(B) Oversee all facets of the program, including trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to member firms (including ensuring compliance with financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations;

(C) Review the size and allocation of the regulatory budget and resources; and the number, hiring and termination, and compensation of regulatory personnel;

(D) Supervise the contract market's chief regulatory officer, who will report directly to the ROC;

(E) Prepare an annual report assessing the contract market's self-regulatory program for the board of directors and the Commission, which sets forth the regulatory program's expenses, describes its staffing and structure, catalogues disciplinary actions taken during the year, and reviews the performance of disciplinary committees and panels;

(F) Recommend changes that would ensure fair, vigorous, and effective regulation; and

(G) Review regulatory proposals and advise the board as to whether and how such changes may impact regulation.

(4) Disciplinary panels

All contract markets shall minimize conflicts of interest in their disciplinary processes through disciplinary panel composition rules that preclude any group or class of industry participants from dominating or exercising disproportionate influence on such panels. Contract markets can further minimize conflicts of interest by including in all disciplinary panels at least one person who would qualify as a public director, as defined in subsections (2)(ii) and (2)(iii) above, except in cases limited to decorum, attire, or the timely submission of accurate records required for clearing or verifying each day's transactions. If contract market rules provide for appeal to the board of directors, or to a committee of the board, then that appellate body shall also include at least one person who would qualify as a public director as defined in subsections (2)(ii) and (2)(iii) above.

Core Principle 17 of section 5(d) of the Act: COMPOSITION OF GOVERNING BOARDS OF CONTRACT MARKETS.—The governance arrangements of the board of trade shall be designed to permit consideration of the views of market participants.

(a) *Guidance.* [Reserved]

(b) *Acceptable Practices.* [Reserved]

Core Principle 18 of section 5(d) of the Act: RECORDKEEPING.—The board of trade shall maintain records of all activities relating to the business of the contract market—

(A) In a form and manner that is acceptable to the Commission; and

(B) For a period of at least 5 years.

(a) *Guidance.* [Reserved]

(b) *Acceptable Practices.* [Reserved]

Core Principle 19 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 not—

(A) Adopt any rule or taking any action that results in any unreasonable restraint of trade; or

(B) Impose any material anticompetitive burden on trading on the contract market.

(a) *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]

Core Principle 20 of section 5(d) of the Act: SYSTEM SAFEGUARDS.—The board of trade shall—

(A) Establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

(B) Establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the board of trade; and

(C) Periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

(a) *Guidance.* [Reserved]

(b) *Acceptable Practices.* [Reserved]

Core Principle 21 of section 5(d) of the Act: FINANCIAL RESOURCES.—

(A) IN GENERAL.—The board of trade shall have adequate financial, operational, and managerial resources to discharge each responsibility of the board of trade.

(B) DETERMINATION OF ADEQUACY.—The financial resources of the board of trade shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the contract market to cover the operating costs of the contract market for a 1-year period, as calculated on a rolling basis.

(a) *Guidance.* [Reserved]

(b) *Acceptable Practices.* [Reserved]

Core Principle 22 of section 5(d) of the Act: DIVERSITY OF BOARD OF DIRECTORS.—The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

(a) *Guidance.* [Reserved]

(b) *Acceptable Practices.* [Reserved]

Core Principle 23 of section 5(d) of the Act: SECURITIES AND EXCHANGE COMMISSION.—The board of trade shall keep any such records relating to swaps defined in section 1a(47)(A)(v) open to inspection and examination by the Securities and Exchange Commission.

(a) *Guidance.* A designated contract market should have arrangements and resources for collecting and maintaining accurate records pertaining to any swaps agreements defined in section 1a(47)(A)(v) of the Act, and should leave them open to inspection and examination for a period of five years.

(b) *Acceptable Practices.* [Reserved]

[77 FR 36717, June 19, 2012]

APPENDIX C—DEMONSTRATION OF COMPLIANCE THAT A CONTRACT IS NOT READILY SUSCEPTIBLE TO MANIPULATION

(a) *Futures Contracts—General Information.* When a designated contract market certifies or submits for approval contract terms and conditions for a new futures contract, that submission should include the following information:

(1) A narrative describing the contract, including data and information to support the contract's terms and conditions, as set by the designated contract market. When designing a futures contract, the designated contract market should conduct market research so that the contract design meets the risk management needs of prospective users and promotes price discovery of the underlying commodity. The designated contract market should consult with market users to obtain their views and opinions during the contract design process to ensure the contract's term and conditions reflect the underlying cash market and that the futures contract will perform the intended risk management and/or price discovery functions. A designated contract market should provide a statement indicating that it took such steps to ensure the usefulness of the submitted contract.

(2) A detailed cash market description for physical and cash-settled contracts. Such descriptions should be based on government and/or other publicly-available data whenever possible and be formulated for both the national and regional/local market relevant to the underlying commodity. For tangible commodities, the cash market descriptions for the relevant market (i.e., national and regional/local) should incorporate at least three full years of data that may include, among other factors, production, consumption, stocks, imports, exports, and prices. Each of those cash market variables should be fully defined and the data sources should be fully specified and documented to permit Commission staff to replicate the estimates of deliverable supply (defined in paragraph (b)(1)(A) of this appendix C). Whenever possible, the Commission requests that monthly or daily prices (depending on the contract) underlying the cash settlement index be submitted for the most recent three full calendar years and for as many of the current year's months for which data are available. For contracts that are cash settled to an index, the index's methodology should be provided along with supporting information showing how the index is reflective of the underlying cash market, is not readily subject to manipulation or distortion, and is based on a cash price series that is reliable, acceptable, publicly available and timely (defined in paragraphs (c)(2) and (c)(3) of this appendix C). The Commission recognizes that the data necessary for accurate and cogent cash market analyses for an underlying commodity vary with the nature of the underlying commodity. The Commission may require that the designated contract market submit a detailed report on commodity definitions and uses.

(b) *Futures Contracts Settled by Physical Delivery.* (1) For listed contracts that are settled by physical delivery, the terms and conditions of the contract should conform to the most common commercial practices and conditions in the cash market for the commodity underlying the futures contract. The terms and conditions should be designed to avoid any impediments to the delivery of the commodity so as to promote convergence between the price of the futures contract and the cash market value of the commodity at the expiration of a futures contract.

(i) Estimating Deliverable Supplies.