

the identity of those notified of changes to applicable position limits.

(d) Each swap dealer and major swap participant shall diligently monitor its trading activities and diligently supervise the actions of its partners, officers, employees, and agents to ensure compliance with the Position Limit Procedures of the swap dealer or major swap participant.

(e) The Position Limit Procedures of each swap dealer and major swap participant shall implement an early warning system designed to detect and alert its senior management when position limits are in danger of being breached (such as when trading has reached a percentage threshold of the applicable position limit, and when position limits have been exceeded). Any detected violation of applicable position limits shall be reported promptly to the firm's governing body. Any detected violation of applicable position limits, other than on-exchange violations reported to the Commission by a designated contract market or a swap execution facility, shall be reported promptly to the Commission. Each swap dealer and major swap participant shall maintain a record of any early warning received, any position limit violation detected, any action taken as a result of either, and the date action was taken.

(f) Each swap dealer and major swap participant that transacts in instruments for which position limits have been established by the Commission, a designated contract market, or a swap execution facility shall test its Position Limit Procedures for adequacy and effectiveness at least once each calendar quarter and maintain records of such tests; the results thereof; any action that is taken as a result thereof including, without limitation, any recommendations for modifications to the firm's Position Limit Procedures; and the date action was taken.

(g) Each swap dealer and major swap participant shall document its compliance with applicable position limits established by the Commission, a designated contract market, or a swap execution facility in a written report on a quarterly basis. Such report shall be promptly reported to and reviewed by the chief compliance officer, senior

management, and governing body of the swap dealer or major swap participant, and shall include, without limitation, a list of all early warnings received, all position limit violations, the action taken in response, the results of the quarterly position limit testing required by this regulation, any deficiencies in the Position Limit Procedures, the status of any pending amendments to the Position Limit Procedures, and any action taken to amend the Position Limit Procedures to ensure compliance with all applicable position limits. Each swap dealer and major swap participant shall retain a copy of this report.

(h) On an annual basis, each swap dealer and major swap participant shall audit its Position Limit Procedures as part of the audit of its Risk Management Program required by Commission regulations.

(i) All records required to be maintained pursuant to these regulations shall be maintained in accordance with Commission Regulation §1.31 and shall be made available promptly upon request to representatives of the Commission and to representatives of applicable prudential regulators.

#### **§ 23.602 Diligent supervision.**

(a) *Supervision.* Each swap dealer and major swap participant shall establish and maintain a system to supervise, and shall diligently supervise, all activities relating to its business performed by its partners, members, officers, employees, and agents (or persons occupying a similar status or performing a similar function). Such system shall be reasonably designed to achieve compliance with the requirements of the Commodity Exchange Act and Commission regulations.

(b) *Supervisory System.* Such supervisory system shall provide, at a minimum, for the following:

(1) The designation, where applicable, of at least one person with authority to carry out the supervisory responsibilities of the swap dealer or major swap participant for all activities relating to its business as a swap dealer or major swap participant.

(2) The use of reasonable efforts to determine that all supervisors are qualified and meet such standards of

training, experience, competence, and such other qualification standards as the Commission finds necessary or appropriate.

**§ 23.603 Business continuity and disaster recovery.**

(a) *Business continuity and disaster recovery plan required.* Each swap dealer and major swap participant shall establish and maintain a written business continuity and disaster recovery plan that outlines the procedures to be followed in the event of an emergency or other disruption of its normal business activities. The business continuity and disaster recovery plan shall be designed to enable the swap dealer or major swap participant to continue or to resume any operations by the next business day with minimal disturbance to its counterparties and the market, and to recover all documentation and data required to be maintained by applicable law and regulation.

(b) *Essential components.* The business continuity and disaster recovery plan of a swap dealer or major swap participant shall include the following components:

(1) Identification of the documents, data, facilities, infrastructure, personnel and competencies essential to the continued operations of the swap dealer or major swap participant and to fulfill the obligations of the swap dealer or major swap participant.

(2) Identification of the supervisory personnel responsible for implementing each aspect of the business continuity and disaster recovery plan and the emergency contacts required to be provided pursuant to this regulation.

(3) A plan to communicate with the following persons in the event of an emergency or other disruption, to the extent applicable to the operations of the swap dealer or major swap participant: employees; counterparties; swap data repositories; execution facilities; trading facilities; clearing facilities; regulatory authorities; data, communications and infrastructure providers and other vendors; disaster recovery specialists and other persons essential to the recovery of documentation and data, the resumption of operations, and compliance with the Commodity Ex-

change Act and Commission regulations.

(4) Procedures for, and the maintenance of, back-up facilities, systems, infrastructure, alternative staffing and other resources to achieve the timely recovery of data and documentation and to resume operations as soon as reasonably possible and generally within the next business day.

(5) Maintenance of back-up facilities, systems, infrastructure and alternative staffing arrangements in one or more areas that are geographically separate from the swap dealer's or major swap participant's primary facilities, systems, infrastructure and personnel (which may include contractual arrangements for the use of facilities, systems and infrastructure provided by third parties).

(6) Back-up or copying, with sufficient frequency, of documents and data essential to the operations of the swap dealer or major swap participant or to fulfill the regulatory obligations of the swap dealer or major swap participant and storing the information off-site in either hard-copy or electronic format.

(7) Identification of potential business interruptions encountered by third parties that are necessary to the continued operations of the swap dealer or major swap participant and a plan to minimize the impact of such disruptions.

(c) *Distribution to employees.* Each swap dealer and major swap participant shall distribute a copy of its business continuity and disaster recovery plan to relevant employees and promptly provide any significant revision thereto. Each swap dealer and major swap participant shall maintain copies of the business continuity and disaster recovery plan at one or more accessible off-site locations. Each swap dealer and major swap participant shall train relevant employees on applicable components of the business continuity and disaster recovery plan.

(d) *Commission notification.* Each swap dealer and major swap participant shall promptly notify the Commission of any emergency or other disruption that may affect the ability of the swap dealer or major swap participant to fulfill its regulatory obligations or would have a significant adverse effect on the