safely store all audit trail data retained in its transaction history database. Such safe storage capability must include the capability to store all data in the database in a manner that protects it from unauthorized alteration, as well as from accidental erasure or other loss. Data must be retained in accordance with the recordkeeping requirements of Core Principle 18 and the associated regulations in subpart S of this part.

§ 38.553 Enforcement of audit trail requirements.

(a) Annual audit trail and recordkeeping reviews. A designated contract market must enforce its audit trail and recordkeeping requirements through at least annual reviews of all members and persons and firms subject to designated contract market recordkeeping rules to verify their compliance with the contract market’s audit trail and recordkeeping requirements. Such reviews must include, but are not limited to, the following:

(1) For electronic trading, audit trail and recordkeeping reviews must include reviews of randomly selected samples of front-end audit trail data for order routing systems; a review of the process by which user identifications are assigned and user identification records are maintained; a review of usage patterns associated with user identifications to monitor for violations of user identification rules; and reviews of account numbers and customer type indicator codes in trade records to test for accuracy and improper use.

(2) For open outcry trading, audit trail and recordkeeping reviews must include reviews of members’ and market participants’ compliance with the designated contract market’s trade timing, order ticket, and trading card requirements.

(b) Enforcement program required. A designated contract market must establish a program for effective enforcement of its audit trail and recordkeeping requirements for both electronic and open-outcry trading, as applicable. An effective program must identify members and persons and firms subject to designated contract market recordkeeping rules that have failed to maintain high levels of compliance with such requirements, and levy meaningful sanctions when deficiencies are found. Sanctions must be sufficient to deter recidivist behavior. No more than one warning letter may be issued to the same person or entity found to have committed the same rule violation within a rolling twelve month period.

Subpart L—Financial Integrity of Transactions

SOURCE: 77 FR 36700, June 19, 2012, unless otherwise noted.

§ 38.600 Core Principle 11.

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:

(1) The financial integrity of any:

(i) Futures commission merchant, and

(ii) Introducing broker; and

(2) The protection of customer funds.

§ 38.601 Mandatory clearing.

(a) Transactions executed on or through the designated contract market must be cleared through a Commission-registered derivatives clearing organization, in accordance with the provisions of part 39 of this chapter. Notwithstanding the foregoing, transactions in security futures products executed on or through the designated contract market may alternatively be cleared through a clearing agency, registered pursuant to section 17A of the Securities Exchange Act of 1934.

(b) A designated contract market must coordinate with each derivatives clearing organization to which it submits transactions for clearing, in the development of rules and procedures to facilitate prompt and efficient transaction processing in accordance with
§ 38.602 General financial integrity.
A designated contract market must provide for the financial integrity of its transactions by establishing and maintaining appropriate minimum financial standards for its members and non-intermediated market participants.

§ 38.603 Protection of customer funds.
A designated contract market must have rules concerning the protection of customer funds. These rules shall address appropriate minimum financial standards for intermediaries, the segregation of customer and proprietary funds, the custody of customer funds, the investment standards for customer funds, intermediary default procedures and related recordkeeping. A designated contract market must review the default rules and procedures of the derivatives clearing organization that clears for such designated contract market to wind down operations, transfer customers, or otherwise protect customers in the event of a default of a clearing member or the derivatives clearing organization.

§ 38.604 Financial surveillance.
A designated contract market must monitor members' compliance with the designated contract market's minimum financial standards and, therefore, must routinely receive and promptly review financial and related information from its members, as well as continuously monitor the positions of members and their customers. A designated contract market must have rules that prescribe minimum capital requirements for member futures commission merchants and introducing brokers. A designated contract market must:

(a) Continually survey the obligations of each futures commission merchant created by the positions of its customers;

(b) As appropriate, compare those obligations to the financial resources of the futures commission merchant; and

(c) Take appropriate steps to use this information to protect customer funds.

§ 38.605 Requirements for financial surveillance program.
A designated contract market’s financial surveillance program for futures commission merchants, retail foreign exchange dealers, and introducing brokers must comply with the requirements of §1.52 of this chapter to assess the compliance of such entities with applicable contract market rules and Commission regulations.

§ 38.606 Financial regulatory services provided by a third party.
A designated contract market may comply with the requirements of §38.604 (Financial Surveillance) and §38.605 (Requirements for Financial Surveillance Program) of this part through the regulatory services of a registered futures association or a registered entity (collectively, “regulatory service provider”), as such terms are defined under the Act. A designated contract market must ensure that its regulatory service provider has the capacity and resources necessary to provide timely and effective regulatory services, including adequate staff and appropriate surveillance systems. A designated contract market will at all times remain responsible for compliance with its obligations under the Act and Commission regulations, and for the regulatory service provider’s performance on its behalf. Regulatory services must be provided under a written agreement with a regulatory services provider that shall specifically document the services to be performed as well as the capacity and resources of the regulatory service provider with respect to the services to be performed.

§ 38.607 Direct access.
A designated contract market that permits direct electronic access by customers (i.e., allowing customers of futures commission merchants to enter orders directly into a designated contract market’s trade matching system for execution) must have in place effective systems and controls reasonably