

§ 39.6

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class of swaps that the Commission finds would otherwise be subject to a clearing requirement, the Commission will:

(i) Investigate the relevant facts and circumstances;

(ii) Within 30 days of the completion of its investigation, issue a public report containing the results of the investigation; and

(iii) Take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the swap, group, category, type, or class of swaps.

(d) *Stay of clearing requirement.* (1) After making a determination that a swap, or group, category, type, or class of swaps is required to be cleared, the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement until the Commission completes a review of the terms of the swap, or group, category, type, or class of swaps and the clearing arrangement.

(2) A counterparty to a swap that wishes to apply for a stay of the clearing requirement for that swap shall submit a written request to the Secretary of the Commission that includes:

(i) The identity and contact information of the counterparty to the swap;

(ii) The terms of the swap subject to the clearing requirement;

(iii) The name of the derivatives clearing organization clearing the swap;

(iv) A description of the clearing arrangement; and

(v) A statement explaining why the swap should not be subject to a clearing requirement.

(3) A derivatives clearing organization that has accepted for clearing a swap, or group, category, type, or class of swaps that is subject to a stay of the clearing requirement shall provide any information requested by the Commission in the course of its review.

(4) The Commission will complete its review not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type, or class of swaps agrees to an extension.

(5) Upon completion of its review, the Commission may:

(i) Determine, subject to any terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type, or class of swaps must be cleared; or

(ii) Determine that the clearing requirement will not apply to the swap, or group, category, type, or class of swaps, but clearing may continue on a non-mandatory basis.

§ 39.6 [Reserved]

§ 39.7 Enforceability.

An agreement, contract or transaction submitted to a derivatives clearing organization for clearing shall not be void, voidable, subject to rescission, or otherwise invalidated or rendered unenforceable as a result of:

(a) A violation by the derivatives clearing organization of the provisions of the Act or of Commission regulations; or

(b) Any Commission proceeding to alter or supplement a rule under section 8a(7) of the Act, to declare an emergency under section 8a(9) of the Act, or any other proceeding the effect of which is to alter, supplement, or require a derivatives clearing organization to adopt a specific rule or procedure, or to take or refrain from taking a specific action.

§ 39.8 Fraud in connection with the clearing of transactions on a derivatives clearing organization.

It shall be unlawful for any person, directly or indirectly, in or in connection with the clearing of transactions by a derivatives clearing organization:

(a) To cheat or defraud or attempt to cheat or defraud any person;

(b) Willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or

(c) Willfully to deceive or attempt to deceive any person by any means whatsoever.