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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 39, and 140

RIN 3038-AE66

Derivatives Clearing Organization General Provisions and Core Principles

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending certain regulations applicable to registered derivatives clearing organizations (DCOs). The amendments address certain risk management and reporting obligations, clarify the meaning of certain provisions, simplify processes for registration and reporting, and codify existing staff relief and guidance, among other things. In addition, the Commission is adopting technical amendments to certain provisions, including certain delegation provisions, in other parts of its regulations.

DATES: *Effective date*: The effective date for this final rule is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Compliance date: DCOs must comply with the amendments to the rules by [INSERT DATE ONE YEAR AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

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I. Background

Section 5b(c)(2) of the Commodity Exchange Act (CEA) sets forth core principles with which a DCO must comply in order to be registered and to maintain registration as a DCO (DCO Core Principles),[1] and part 39 of the Commission's regulations implement the DCO Core Principles. Subpart C of part 39 establishes additional standards for compliance with the DCO Core Principles for those DCOs that have been designated as systemically important (SIDCOs) by the Financial Stability Oversight Council in accordance with Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[2] The subpart C regulations are consistent with the Principles for Financial Market Infrastructures (PFMIs), published by the Committee on Payments and Market Infrastructures (CPMI) and the Technical Committee of the International Organization of Securities Commissions (IOSCO).[3] Other DCOs may elect to opt-in to the subpart C requirements (subpart C DCOs) in order to achieve status as a qualifying central counterparty (QCCP).[4]

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[1] 7 U.S.C. 7a-1.

[2] *See* Dodd-Frank Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

[3] *See* CPMI-IOSCO, Principles for Financial Market Infrastructures (Apr. 2012), available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf*.

[4] In July 2012, the Basel Committee on Banking Supervision, the international body that sets standards for the regulation of banks, published the "Capital Requirements for Bank Exposures to Central Counterparties" (Basel CCP Capital Requirements), which describes standards for capital charges arising

Since the part 39 regulations were adopted, Commission staff has worked with DCOs to address questions regarding interpretation and implementation of the requirements established in the regulations. In May 2019, the Commission proposed certain changes to its part 39 regulations (Proposal)[5] in order to enhance certain risk management and reporting obligations, clarify the meaning of certain provisions, simplify processes for registration and reporting, and codify staff relief and guidance granted since the regulations were first adopted. The Commission also proposed a few new requirements with respect to default procedures and event-specific reporting.

The Commission invited commenters to provide data and analysis regarding any aspect of the proposed rulemaking and received a total of 14 substantive comment letters in response.[6] After considering the comments, the Commission is largely adopting the

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from bank exposures to central counterparties (CCPs) related to over-the-counter derivatives, exchange-traded derivatives, and securities financing transactions. The Basel CCP Capital Requirements create financial incentives for banks, including their subsidiaries and affiliates, to clear financial derivatives with CCPs that are prudentially supervised in a jurisdiction where the relevant regulator has adopted rules or regulations that are consistent with the standards set forth in the PFMIs. Specifically, the Basel CCP Capital Requirements introduce new capital charges based on counterparty risk for banks conducting financial derivatives transactions through a CCP. These incentives include (1) lower capital charges for exposures arising from derivatives cleared through a QCCP, and (2) significantly higher capital charges for exposures arising from derivatives cleared through non-qualifying CCPs. A QCCP is defined as an entity that (i) is licensed to operate as a CCP and is permitted by the appropriate regulator to operate as such, and (ii) is prudentially supervised in a jurisdiction where the relevant regulator has established and publicly indicated that it applies to the CCP, on an ongoing basis, domestic rules and regulations that are consistent with the PFMIs. The failure of a CCP to achieve QCCP status could result in significant costs to its bank customers.

[5] *See* Derivatives Clearing Organization General Provisions and Core Principles, 84 FR 22226 (May 16, 2019).

[6] The Commission received comment letters submitted by the following: Chris Barnard; Cboe Futures Exchange, LLC (CBOE); CME Group, Inc. (CME); Eurex Clearing AG (Eurex); Futures Industry Association (FIA) and International Swaps and Derivatives Association (ISDA); Intercontinental Exchange, Inc. (ICE); LCH Group (LCH); Managed Funds Association (MFA); Minneapolis Grain Exchange, Inc. (MGEX); Nodal Clear, LLC (Nodal); North American Derivatives Exchange, Inc. (Nadex); The Options Clearing Corporation (OCC); Paolo Saguato, of the George Mason University Antonin Scalia Law School; and Securities Industry and Financial Markets Association's Asset Management Group (SIFMA AMG). All comments referred to herein are available on the Commission's website, at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=2985*.

rules as proposed, although there are a number of proposed changes that the Commission has determined to either revise or decline to adopt. The Commission believes that the rules it is adopting herein will provide greater clarity and transparency for DCOs and DCO applicants and lead to more effective DCO compliance and risk management generally.

In the discussion below, the Commission highlights topics of particular interest to commenters and discusses comment letters that are representative of the views expressed on those topics. The discussion does not explicitly respond to every comment submitted; rather, it addresses the most significant issues raised by the proposed rulemaking and analyzes those issues in the context of specific comments.

II. Amendments to Part 1 – General Regulations Under the Commodity Exchange Act

The Commission is adopting as proposed two amendments in part 1 of its regulations in order to remove inapplicable provisions and to clarify when certain requirements do not apply.

A. Written Acknowledgment from Depositories – § 1.20

Regulation 1.20(d)(1) requires a futures commission merchant (FCM) to obtain from each depository with which the FCM deposits futures customer funds, a written acknowledgment that meets certain requirements set forth in § 1.20(d)(3) through (6). Regulation 1.20(d)(1) further provides, however, that an FCM is not required to obtain a written acknowledgment from a DCO that has adopted rules that provide for the segregation of customer funds in accordance with all relevant provisions of the CEA and the Commission's rules and orders thereunder. The Commission proposed to amend

§ 1.20(d) to clarify that the requirements listed in § 1.20(d)(3) through (6) do not apply to a DCO, or to an FCM that clears through that DCO, if the DCO has adopted rules that provide for the segregation of customer funds. The Commission also proposed to amend § 1.20(d)(7) and (8) to explicitly account for FCMs that deposit customer funds with a DCO and thus are not required to obtain a written acknowledgment letter.

ICE, FIA, and ISDA supported the proposed changes, with FIA and ISDA noting that clarifying the applicability of § 1.20(d)(3) through (6) avoids redundant information-sharing arrangements.

B. Governance and Conflicts of Interest – §§ 1.59, 1.63, and 1.69

In 2011, the Commission removed and replaced § 39.2, which previously had exempted DCOs from all Commission regulations except for those specified therein (§ 39.2 exemption).[7] The Commission noted that removal of the § 39.2 exemption would subject DCOs to three existing regulations (§§ 1.59 (activities of self-regulatory organization employees, governing board members, committee members, and consultants); 1.63 (service on self-regulatory organization governing boards or committees by persons with disciplinary histories); and 1.69 (voting by interested members of self-regulatory organization governing boards and various committees)) that were expected to be superseded by other regulations the Commission had proposed.[8]

However, the Commission did not adopt those superseding regulations, and §§ 1.59, 1.63, and 1.69 became applicable to DCOs with the removal of the § 39.2 exemption. Therefore, the Commission proposed to restore DCOs' exemption from §§

[7] *See* Risk Management Requirements for Derivatives Clearing Organizations, 76 FR 3698, 3714 (Jan. 20, 2011) (proposed rule). The current § 39.2 sets forth definitions of terms used in part 39.

[8] *Id*.

1.59, 1.63, and 1.69 by removing "clearing organization" from the definition of "self-regulatory organization" in each of those regulations. The Commission also proposed to amend § 1.64 to remove language that the amendments to the other provisions would render unnecessary. The Commission did not receive any comments on the proposed changes to §§ 1.59, 1.63, 1.64, and 1.69.

III. Amendments to Part 39 – Subpart A – General Provisions Applicable to DCOs

A. Definitions – § 39.2

Regulation 39.2 sets forth definitions applicable to terms used in part 39 of the Commission's regulations. After § 39.2 was adopted, the Commission adopted definitions for some of the same terms that apply in other Commission regulations. The Commission is adopting changes to five definitions in § 39.2 in order to maintain consistency with terms defined elsewhere in Commission regulations and to provide clarity with respect to the use of these terms.

1. Business day

The Commission is removing § 39.19(b)(3), which defines "business day," and moving the definition of "business day" to § 39.2 to make clear that it applies wherever the term is used in part 39. The Commission is also clarifying that the term "Federal holiday" in the "business day" definition refers to the schedule of U.S. federal holidays established under 5 U.S.C. 6103, and adding "any holiday on which a [DCO] and its domestic financial markets are closed" rather than "foreign holiday," as originally proposed, to the list of exceptions to the definition of "business day."

The Commission received two comments on the proposed changes to the definition of "business day." CME suggested substituting "market holiday" for "foreign holiday" in the definition of "business day" to also recognize days that are not Federal holidays when U.S. markets are closed. ICE supported the Commission defining "foreign holiday" and adding the term to the list of exceptions to the definition of "business day," but also noted potential conflicts between the proposed definition of "business day" in § 39.2 and the definition of "business day" in §§ 1.3 and 39.19(b)(3).

The Commission agrees that any day on which markets are closed should not be considered a business day, and therefore is adopting the proposed definition of "business day" with the substitution of "any holiday on which a [DCO] and its domestic financial markets are closed" for "foreign holiday," to encompass both foreign and U.S. market holidays.

In proposing to define "business day" in § 39.2, the Commission also proposed to remove the definition in § 39.19(b)(3), to avoid any conflict between those provisions. The Commission is removing the definition of "business day" from § 39.19(b)(3). The Commission recognizes that the definition of "business day" in § 39.2 differs slightly from the definition of "business day" in § 1.3, but notes that the definition in § 39.2 is meant specifically for application to part 39.

2. Customer, and customer account or customer origin

The Commission is removing the definition of "customer" and modifying the definition of "customer account or customer origin" in § 39.2 because those terms were defined in § 1.3 after § 39.2 was adopted.

ICE commented that, for DCOs organized outside of the United States, references to customer accounts under the proposed definitions do not distinguish appropriately between customer accounts carried by FCM clearing members and customer accounts carried by non-FCM clearing members, which may be subject to segregation and other requirements under non-U.S. law rather than under the CEA. ICE therefore suggested that the Commission clarify the application of the definitions to non-U.S. DCOs. In response to ICE's comment, the Commission notes that "customer" is defined in § 1.3 to mean "any person who uses a [FCM] . . . ."

3. Enterprise risk management

The Commission is adopting as proposed the definition of "enterprise risk management" because the term is used in § 39.10(d), which is discussed below. The Commission did not receive any comments on the proposed definition.

4. Fully collateralized position

The Commission is adopting the definition of "fully collateralized position" in conjunction with proposed exceptions from several part 39 regulations for DCOs that clear fully collateralized positions, as discussed below. Nadex requested clarification of the meaning of the word "counterparty" in the definition of "fully collateralized," and suggested replacing the word with "party" because "counterparty" implies that the DCO need only hold sufficient funds to cover the maximum possible loss that the counterparty may sustain, but to be fully collateralized the DCO must hold sufficient funds to cover the maximum possible loss of each party. In response to Nadex's comment, the Commission is including "party," in addition to "counterparty," in the definition of "fully

collateralized position" to make clear that the definition is intended to include each party to a contract.

5. Key personnel

The Commission is adding "chief information security officer" (CISO) to the list of positions identified in the definition of "key personnel" in § 39.2. Nadex requested clarification that it is sufficient for a staff member to be assigned the responsibilities of a CISO in addition to other responsibilities of their role. Nadex also requested guidance confirming that the CISO may be employed by the DCO or by an affiliate, and that, with respect to a DCO that is also a designated contract market (DCM), an individual may fulfill the role of CISO for both the DCM and DCO.

The Commission confirms that a DCO staff member may be assigned the responsibilities of a CISO in addition to other responsibilities of their role; the CISO may be employed by the DCO or by an affiliate; and, for a DCO that is also a DCM, an individual may fulfill the role of CISO for both the DCM and DCO.

B. Procedures for Registration – § 39.3

1. Application Procedures – § 39.3(a)

The Commission is adopting several changes to its procedures for registration as a DCO generally as proposed. These changes include: revisions to § 39.3(a)(1) to improve the clarity and consistency of the text; revisions to Form DCO to correspond to other proposed revisions to the part 39 regulations; providing greater flexibility in § 39.3(a)(3) for DCO applicants submitting supplemental information; clarifying references in § 39.3(a)(5) to the portion of the Form DCO cover sheet and other application materials that will be made public; and, in new § 39.3(a)(6), permitting the Commission to extend

the 180-day review period for DCO applications for any period of time to which the applicant agrees in writing. The Commission did not receive any comments on these proposed changes.

2. Stay of Application Review – § 39.3(b)

The Commission is adopting as proposed the change to § 39.3(b)(2) to correct inaccurate language. In § 39.3(b)(2), which is the Commission's delegation of authority to the Director of the Division of Clearing and Risk to stay an application for DCO registration that is materially incomplete, the Commission is adopting a change to replace the inaccurate "designation" with "registration." The Commission did not receive any comments on this change.

3. Request to Amend an Order of Registration – § 39.3(a)(2), § 39.(a)(4), and § 39.3(d)

The Commission is adopting as proposed three changes to procedures in § 39.3(a)(2) for a registered DCO requesting an amended order of registration, to reflect current Commission practice. The rule will no longer require use of Form DCO to request an amended order of registration under § 39.3(a)(2), and an applicant will only need to file amended exhibits and other information when filing a Form DCO to update a pending application under § 39.3(a)(4). The Commission also is adopting new § 39.3(d) to establish a separate process for such requests.

ICE supported the proposal to eliminate using Form DCO to request an amended registration order, and stated that it believes the modification to § 39.3(a)(2) will help streamline the process for a DCO to file a request for an amended order.

4. Dormant Registration – § 39.3(e)

Regulation § 39.3(d) establishes the procedure for a dormant DCO to reinstate its registration before it can begin "listing or relisting" products for clearing. The Commission is adopting as proposed changes to § 39.3(d), renumbered as § 39.3(e), to correct inaccurate language. Specifically, the Commission is adopting an amendment to replace "listing or relisting" with "accepting" to more accurately describe a DCO's activities. The Commission did not receive any comments on these proposed changes.

5. Vacation of Registration – § 39.3(f)

The Commission is adopting as proposed changes to § 39.3(e), renumbered as § 39.3(f), to codify requirements for a DCO requesting vacation of its registration, and provide greater transparency to any DCO that is considering vacating its registration.[9] The amendments renumber current § 39.3(e) as § 39.3(f)(1) and add provisions under § 39.3(f)(1) regarding procedures for a DCO seeking to vacate its registration. The Commission is also adopting § 39.3(f)(2) to specify that the requirement in section 7 of the CEA that the Commission must "forthwith send a copy" of the notice that was filed with the Commission requesting vacation and the order of vacation to all other registered entities will be met by posting the required documents on the Commission's website. The Commission did not receive any comments on the proposed changes.

6. Request for Transfer of Registration and Open Interest – § 39.3(g)

The Commission is adopting changes to § 39.3(f), renumbered as § 39.3(g), to simplify the requirements for a DCO to request a transfer of open interest and to separate

[9] The Commission is also making a technical change to § 39.3(f), to remove the term "registered" from "registered [DCO]," for consistency with other provisions in part 39.

the process from the procedures used to report a change to a DCO's corporate structure or ownership. The Commission proposed changes regarding procedures that a DCO must follow to request the transfer of its DCO registration and positions comprising open interest for clearing and settlement, in anticipation of a corporate change. The changes simplify the requirements for requesting a transfer of open interest and remove references to transfers of registration and requirements regarding corporate changes, so that § 39.3(g) would only apply to instances in which a DCO requests to transfer its open interest. Changes to the DCO's ownership would continue to be addressed under § 39.19(c)(4)(viii), renumbered as § 39.19(c)(4)(ix). In light of a comment from ICE discussed below, the Commission is further modifying § 39.3(g) to account for a transfer of foreign futures positions by a DCO to a clearing organization permitted to clear for a registered foreign board of trade pursuant to § 48.7.

Under the amendments to § 39.3(g), a DCO seeking to transfer its open interest will be required to submit rules for Commission approval pursuant to § 40.5,[10] rather than submitting a request for an order at least three months prior to the anticipated transfer. Regulation 39.3(g) also specifies certain information that the DCO would be required to include in its submission pursuant to § 40.5.

CME and ICE generally supported the proposed changes to § 39.3(g) regarding requests to transfer open interest. CME noted that a DCO cannot unilaterally transfer to another DCO open interest associated with contracts that are subject to the rules of a DCM, as those transfers must be authorized by the DCM through rule amendment or

[10] The Commission reiterates that, as noted in the Proposal, SIDCOs should consider whether the facts and circumstances of the approval sought pursuant to a § 40.5 filing also obligate a SIDCO to file a § 40.10 submission.

otherwise. CME referred to procedures under § 38.3(d) for a DCM to transfer open interest associated with contracts listed on a DCM to another DCM, in connection with a change of registration. The Commission agrees that where a DCO is requesting transfer of open interest under § 39.3(g) for contracts listed on a DCM, the DCM also would be subject to applicable Commission regulations, including part 38.

CME and ICE also supported use of the rule approval process under § 40.5 for submission of requests to transfer open interest. ICE suggested that it may be appropriate for a transfer to take effect pursuant to a self-certification under § 40.6 where the transfer does not raise any particular novel issues or concerns. ICE further requested that the Commission clarify that it may, in appropriate circumstances, take action on a transfer request in less than 45 days, both in circumstances that do not raise particular concerns and in exigent or distressed circumstances in which the full period may not be necessary or feasible. The Commission declines to adopt ICE's suggestion to permit a transfer of open interest to be made pursuant to § 40.6 and is adopting the requirement to submit such requests under § 40.5 as proposed. The Commission only has ten business days to review rules submitted pursuant to § 40.6, which the Commission believes is not sufficient time to review rules related to transfers of open interest. The Commission reviews transfers of open interest to ensure that clearing members have sufficient notice of the transfer, because there may be clearing members of the transferring DCO that are not members of the receiving DCO. Such clearing members may need time to become members of the receiving DCO or to close out their positions, and if they are FCMs that clear for customers, to transfer their customers to other FCMs if necessary. The Commission also reviews the transfer plans (typically there is a transition agreement

between the DCOs) to make sure that the associated risks will be adequately managed. The Commission confirms, however, that under § 40.5(g), it has the ability to expedite its approval of a request where appropriate.

ICE also suggested clarification of procedures for transfers between a registered DCO and a clearing organization that is not a registered DCO (such as a foreign clearing organization that is either an exempt DCO or otherwise not subject to DCO registration based on its activities). As the Commission noted in the Proposal, under the existing regulatory framework, all futures positions and U.S. customer swap positions must be cleared by a registered DCO, while proprietary swap positions of U.S. persons may be cleared by a registered or exempt DCO.[11] However, the proposed rule failed to contemplate a transfer of foreign futures positions by a DCO to a clearing organization permitted to clear for a registered foreign board of trade pursuant to § 48.7. As noted above, the Commission is modifying the final rule to broaden its applicability to account for such a transfer.

C. Procedures for Implementing DCO Rules and Clearing New Products

The Commission is adopting two non-substantive changes to its procedures for implementing DCO rules and clearing new products in § 39.4, to remove or correct certain references. The Commission did not receive any comments on the proposed amendments to § 39.4 and is adopting them as proposed.

1. Request for Approval of Rules – § 39.4(a)

Regulation 39.4(a) specifies that an applicant for registration or a registered DCO may request, pursuant to the procedures set forth in § 40.5, that the Commission approve

[11] *See* Derivatives Clearing Organization General Provisions and Core Principles, 84 FR at 22230, n. 19.

any or all of its rules prior to their implementation. In practice, the Commission's review of applications for DCO registration includes review of the applicant's rules, which are required to be submitted as Exhibit A-2 to Form DCO. The Commission's issuance of an order of registration as a DCO constitutes an approval of the applicant's rules that were submitted as part of the application. Accordingly, the Commission is deleting the reference in § 39.4(a) to an applicant for registration, as it is unnecessary for an applicant to separately request approval of its rules.

2. Portfolio Margining – § 39.4(e)

Regulation 39.4(e) establishes certain procedural requirements that apply to a DCO seeking approval for a futures account portfolio margining program. Under § 39.4(e), a DCO seeking to provide a portfolio margining program under which securities would be held in a futures account is required to petition the Commission for an order "under section 4d of the [CEA]." To conform terminology to other provisions in part 39 which distinguish between futures accounts subject to section 4d(a) of the CEA and cleared swaps accounts subject to section 4d(f) of the CEA, the Commission is substituting "section 4d(a)" for "section 4d" in § 39.4(e).

IV. Amendments to Part 39 – Subpart B – Compliance with Core Principles

A. Fully Collateralized Positions

The Commission is amending certain regulations in part 39 to address fully collateralized positions, which do not pose the full range of risks that the regulations are meant to address. As discussed in the Proposal, fully collateralized positions do not expose DCOs to many of the risks that traditionally margined products do, as full collateralization prevents a DCO from being exposed to credit risk stemming from the

inability of a clearing member or customer of a clearing member to meet a margin call or a call for additional capital.[12] This renders certain provisions of part 39 inapplicable or unnecessary. As a result, the Division of Clearing and Risk has granted relief from certain provisions of part 39 to DCOs that clear fully collateralized positions.[13] The Commission is amending certain regulations consistent with that relief.[14]

The amendments are based on an assessment of how the DCO Core Principles and part 39 apply to fully collateralized positions, as well as the relief previously granted to DCOs that clear such positions. The Commission believes the amendments will not negatively impact prudent risk management at any DCO, regardless of the types of products cleared. The amendments to each provision are discussed in this section, whereas specific comments are addressed in conjunction with the discussion of those provisions further below.[15]

1. Definition of "Fully Collateralized Positions" – § 39.2

As discussed above, the Commission is adopting a definition of "fully collateralized position" as a contract cleared by a DCO that requires the DCO to hold, at all times, funds in the form of the required payment sufficient to cover the maximum possible loss that a party or counterparty could incur upon liquidation or expiration of the contract.

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[12] *See id*. at 22245.

[13] *See* CFTC Letter No. 14-04 (Jan. 16, 2014) (granting exemptive relief to Nadex); CFTC Letter No. 17-35 (July 24, 2017) (granting exemptive relief to LedgerX).

[14] The Division of Clearing and Risk also issued interpretive guidance to Nadex for other provisions in part 39. CFTC Letter No. 14-05 (Jan. 16, 2014). The interpretive guidance may be relied on by third parties, and is not impacted by this rulemaking.

[15] To the extent there were comments on the changes to regulations in part 39 that address DCOs that clear fully collateralized positions, the Commission has addressed these comments throughout. To the extent there were no comments, the Commission is adopting the changes as proposed.

2. Computation of Financial Resources Requirement – § 39.11(c)(1)

Regulation 39.11(a)(1) requires a DCO to maintain financial resources sufficient to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions. Regulation 39.11(c)(1)[16] requires a DCO to perform monthly stress testing in order to make a reasonable calculation of the financial resources it would need in the event of such a default. The Commission is amending § 39.11(c)(1)(i) to clarify that a DCO does not have to perform monthly stress tests on fully collateralized positions. For fully collateralized positions, a DCO holds its maximum possible loss on each contract at all times and does not face the risk of a clearing member default. The monthly stress tests required by § 39.11(c)(1)(i) are therefore unnecessary for fully collateralized positions.

3. Liquidity of Financial Resources – § 39.11(e)(1)(ii)

Regulation 39.11(e)(1)(ii) requires that the financial resources allocated by a DCO to meet the requirements of § 39.11(a)(1) (*i.e.*, its default resources) be sufficiently liquid to enable the DCO to fulfill its obligations during a one-day settlement cycle. The Commission is amending § 39.11(e)(1)(iv) to clarify that DCOs do not need to include fully collateralized positions in the calculation required thereunder. The specific amount of liquid resources a DCO must hold is based on the historical settlement pays of its clearing members. A DCO maintains sufficient liquidity for fully collateralized positions by requiring clearing members to post the full potential loss of a position in the form of

[16] This paragraph is being renumbered as § 39.11(c)(1)(i) due to revisions discussed elsewhere in this rulemaking.

the potential obligation. Requiring collateral to be in the form of the potential obligation eliminates the risk that the DCO will not have sufficient liquidity to meet its obligations and the need for daily mark-to-market settlements. Further, if a DCO were to complete the calculation required by § 39.11(e)(1)(ii), the amount would not change from day to day as the DCO operates a fully collateralized model. As a result, the calculation required in § 39.11(e)(1)(ii) is inapplicable to fully collateralized positions.

4. Periodic Reporting of Participant Eligibility – § 39.12(a)(5)(i) and (a)(5)(i)(B)

Regulation 39.12(a)(5)(i) requires a DCO to require its clearing members to provide the DCO with periodic financial reports that allow the DCO to assess whether participation requirements are being met on an ongoing basis. Regulation 39.12(a)(5)(i)(B)[17] requires a DCO to make these reports available to the Commission at the Commission's request.[18] The Commission is adding new § 39.12(a)(5)(v) to exclude non-FCM clearing members that only clear fully collateralized positions from the financial reporting requirements in § 39.12(a)(5)(i) and (a)(5)(i)(B). The Commission's participant eligibility requirements in § 39.12(a) are intended to ensure that DCO participants maintain sufficient financial resources and operational capacity to meet the obligations arising from clearing at a DCO.[19] Clearing members that only clear fully collateralized positions present no credit or default risk to the DCO because their full potential loss is already held by the DCO. Thus, periodic financial reports from non-

[17] This paragraph is being renumbered as § 39.12(a)(5)(iii) due to revisions discussed elsewhere in this rulemaking.

[18] Regulation 39.12(a)(5)(i)(B) allows DCOs to either require clearing members to make the reports available to the Commission or to provide the reports to the Commission directly.

[19] *See* Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69352 (Nov. 8, 2011).

FCM clearing members that only clear fully collateralized positions do not provide any risk management benefit to a DCO.

5. Large Trader Stress Tests – § 39.13(h)(3)

Regulation 39.13(h)(3) requires a DCO to conduct stress testing on a daily basis with respect to each large trader who poses significant risk to a clearing member or the DCO, and at least on a weekly basis with respect to each clearing member account, by house origin and by each customer origin. The Commission is adding new § 39.13(h)(3)(iii) to exclude clearing member accounts that hold only fully collateralized positions from the stress testing requirements in § 39.13(h)(3)(i) and (ii). As discussed above, DCOs hold, at all times, the full potential loss of fully collateralized positions cleared by the DCO, and a DCO does not face the risk of default from accounts that only hold fully collateralized positions. As a result, such stress tests would not provide DCOs new information on accounts that only clear fully collateralized positions.

6. Default Rules and Procedures – § 39.16(e)

Regulation 39.16(a) requires a DCO to have rules and procedures designed to allow for the efficient, fair, and safe management of events during which clearing members become insolvent or otherwise default on their obligations to the DCO. Regulation 39.16(b) and (c) require, among other things, a DCO to maintain a written default management plan and procedures that would permit the DCO to take timely action to contain losses and liquidity pressures in the event of a default. In response to a request from Nadex,[20] the Commission is adopting new § 39.16(e) to provide that a DCO may satisfy the requirements of paragraphs (a), (b), and (c) of § 39.16 by having rules

[20] *See* discussion *infra* section IV.G.3.

that permit it to clear only fully collateralized positions. This rule was not included in the Proposal because relief had been provided through a staff interpretative letter, as discussed below, but the Commission believes it is appropriate to include it in the final rule because it is consistent with other exceptions for fully collateralized positions adopted herein.

7. Daily Reporting – § 39.19(c)(1)(i)

Regulation 39.19(c)(1)(i) requires a DCO to submit to the Commission a daily report containing information on initial margin, daily variation margin payments, other daily cash flows, and end-of-day positions. The Commission is amending § 39.19(c)(1)(i) such that the enumerated daily reporting is not required with respect to fully collateralized positions. Because fully collateralized positions do not pose a credit risk to the DCO or other participants, the Commission does not need daily reporting of this information with respect to fully collateralized positions.

B. Compliance with Core Principles – § 39.10

1. Chief Compliance Officer – § 39.10(c)

The Commission is adopting several amendments to § 39.10(c) to permit greater flexibility in the reporting requirements applicable to the Chief Compliance Officer (CCO) for DCOs engaged in substantial activities not related to clearing. These amendments are intended to make the process of preparing the CCO's annual report more efficient, to improve clarity and consistency of the regulations, and to require that the CCO's annual report describe the process by which the report is provided to the board of directors or senior officer so that compliance with existing regulations is evident outside the context of an examination of the DCO's board of directors' meeting minutes or other

records. Unless stated otherwise below, the Commission did not receive any comments on the proposed amendments to § 39.10(c) and is adopting them as proposed.

The Commission is amending § 39.10(c)(1)(ii) to permit a DCO's CCO to report to the senior officer responsible for the DCO's clearing activities if the DCO engages in substantial activities not related to clearing (for example, if the DCO is also a DCM). The Commission is also amending § 39.10(c)(4)(i) to permit the CCO to submit the annual report to the same individual (or to the board of directors) for internal review. CME supported these proposed amendments, noting that the senior officer responsible for the DCO's clearing activities is most familiar with the day-to-day operations of the DCO and its personnel and is therefore generally best positioned to ensure that the compliance program implemented by the CCO is appropriately designed to ensure compliance with the CEA and Commission regulations.

The Commission is amending § 39.10(c)(3)(i) to permit the CCO's annual report to incorporate by reference the parts of its most recent CCO annual report containing descriptions of the DCO's written policies and procedures, to the extent that such policies and procedures have not materially changed since they were most recently described in a previously submitted CCO annual report submitted within the five-year period prior to the date of the CCO annual report containing such incorporation by reference. CME strongly supported these proposed revisions, noting that they reduce the requirement to provide duplicative information contained in previous reports and thus reduce the administrative burden on both the DCO's compliance staff and Commission staff. CME also commented that the five-year timeframe for re-introducing materially unchanged policies is appropriate.

The Commission is amending § 39.10(c)(3)(ii)(A), which requires the CCO to prepare an annual report that reviews each "core principle and applicable Commission regulation," and with respect to each, identifies the compliance policies and procedures that are designed to ensure compliance "with the core principle," to change the latter language to "with each core principle and applicable regulation." The Commission is also amending § 39.10(c)(3)(ii) to clarify that, for SIDCOs and subpart C DCOs, this includes the Commission's regulations in subpart C of part 39. In addition, the regulation now requires that the compliance policies and procedures be identified "by name, rule number, or other identifier."

The Commission is amending § 39.10(c)(4)(i) to require that the CCO's annual report describe the process by which it was submitted to the board of directors or the senior officer. In response to a comment described below, rather than requiring that the CCO's annual report include the date on which it was submitted to the board of directors or the senior officer, the Commission is further amending § 39.10(c)(4)(i) to require that it be accompanied by a cover letter, notice, or other document that specifies the date of submission. Lastly, the Commission is amending § 39.10(c)(4)(ii) to remove the requirement that the annual report be submitted concurrently with the DCO's fiscal year-end audited financial statement to be consistent with a change to § 39.19(c)(3)(iv) explained below.

CME stated that including within the annual report the date on which the annual report was submitted to the board of directors or the senior officer, per the proposed amendments to § 39.10(c)(4)(i), is problematic because the report would need to be prepared and distributed "well in advance" of a board or committee meeting or other

intended date. CME noted that a change of meeting date or agenda could render the date included in the report inaccurate. CME therefore recommended that the CCO's annual report include the intended date of submission, but that a cover sheet be added to the report after the meeting that either confirms that the date within the report is correct or provides an alternative date specifying when the report was actually provided. The Commission agrees that the revisions, as proposed, could cause the report to be inaccurate in the event of a delay or other scheduling change. In light of CME's comments, the Commission is not including in § 39.10(c)(4)(i) the proposed requirement that the CCO's annual report include the date of submission and is replacing it with a requirement that the annual report be accompanied by a cover letter, notice, or other document that specifies the date of submission.

Nadex suggested that the Commission consider conforming the language of the CCO's duties and annual report requirements in § 39.10 with that of § 3.3, which pertains to the CCOs of FCMs, swap dealers, and major swap participants. The Commission is not adopting this change, because recent amendments to § 3.3 were largely intended to more closely harmonize these requirements with corresponding rules of the Securities and Exchange Commission (SEC) for CCOs of security-based swap dealers and major security-based swap participants, and are not applicable to DCOs. However, the Commission may consider this in a future rulemaking.

2. Enterprise Risk Management – § 39.10(d)

The Commission is adopting new § 39.10(d), which requires a DCO to have a program of enterprise risk management and to identify as its enterprise risk officer an

appropriate individual that exercises the full responsibility and authority to manage the DCO's enterprise risk management function.

ICE was generally supportive of § 39.10(d) as proposed, and CME agreed with several aspects of the proposal. MGEX recognized the value that an enterprise risk management program provides in ensuring the integrity of DCOs and the financial markets and agreed that a DCO should assess and manage the broad array of risks identified in the Proposal. MGEX requested that the Commission grant a longer time period for compliance to allow DCOs adequate time to implement the program, given the extensive nature of an enterprise risk management program and the work that will be involved in developing such a program. The Commission is giving DCOs one year to comply with the amendments to the regulations.

The Commission did not receive any comments specifically on §§ 39.10(d)(1), (d)(2), or (d)(3), and is finalizing these paragraphs as proposed.

The Commission received several responses to a request for comment regarding whether the enterprise risk officer should be required to report directly to the board of directors of the organization for which the enterprise risk officer is responsible for managing the risks. OCC stated that, generally, the enterprise risk officer should report directly to the board of directors, or to an appropriate committee of the board of directors, but also commented that a DCO should have the discretion to determine whether the enterprise risk officer should report directly to the board of directors, a committee of the board, or the senior officer responsible for a DCO's clearing activities. CME commented that the enterprise risk officer should have access to the board of directors and its relevant committees and should provide regular reports to the board or its relevant committees,

but did not believe it is necessary for the enterprise risk officer to have a direct administrative reporting relationship to the board or its committees. Nadex stated that the enterprise risk officer should not report to the DCO's board of directors because the purpose of a board of directors is to provide oversight and strategic guidance to the organization, not management of specific individuals within the organization. Nadex suggested that the enterprise risk officer provide reports to the board but could report to the DCO's chief executive officer, chief risk officer, or other appropriate officer of the DCO or a parent company.

In light of the comments, the Commission has concluded that a DCO should have the discretion to determine whether its enterprise risk officer will report directly to the board of directors, to an appropriate committee of the board of directors, or to the senior officer responsible for the DCO's clearing activities. Regardless of the formal reporting relationship, however, the Commission believes that the enterprise risk officer should have access to the board of directors to ensure that the board receives reports and information from the enterprise risk officer. The Commission is therefore finalizing proposed § 39.10(d)(4) with additional language requiring such access.

The Commission also requested comment as to whether a DCO's chief risk officer should be permitted to also serve as its enterprise risk officer, and commenters generally were supportive. Nadex noted that the two positions "do not have conflicting purposes." OCC noted that a chief risk officer is typically the individual with the greatest authority, independence, resources, expertise, and access to relevant information necessary to fulfill the responsibilities of managing the DCO's enterprise risk management function. CME commented that whether a DCO's chief risk officer should

also be permitted to serve as the overall organization's enterprise risk officer depends on the organizational structure related to the DCO and the structure of the broader corporate group, while Nodal stated that a DCO should have "complete discretion" to identify the appropriate person to serve as the enterprise risk officer, including whether that person may also be the DCO's chief risk officer. MGEX noted that, due to existing chief risk officer responsibilities of administering similar risk management programs, the chief risk officer may be the most adept individual to manage an enterprise-wide risk management framework. MGEX further argued that allowing the same person to fill both roles would also prevent fragmenting risk management oversight responsibilities while being less time-consuming and less costly for smaller DCOs, adding that it would be "effectively impossible" for smaller DCOs to have a fully independent employee or officer, thereby furthering the need for flexibility in who can fulfill such role. LCH recommended that the role of the enterprise risk officer be included in the role and responsibilities of the chief risk officer to reduce duplication of responsibilities and benefit from efficiencies that can be derived from combining "these related roles."

In response to the comments, the Commission believes that a DCO should generally have the discretion to allow the DCO's enterprise risk officer and its chief risk officer to be the same individual and, therefore, is finalizing the regulation as proposed, without adding language prohibiting this practice. However, the Commission notes that § 39.10(d)(4), as finalized, requires the enterprise risk officer to have, among other things, the independence and resources necessary to fulfill the responsibilities of the position. The Commission believes that, for larger, more complex DCOs, it may be challenging to meet this requirement if one individual performs the functions of both roles.

In response to a request for clarification from Nadex, the Commission confirms that the regulations, as finalized, do not require that an individual be assigned the title of "Enterprise Risk Officer." It is sufficient that the DCO be able to identify the individual assigned the responsibilities of the position and that the other applicable requirements are satisfied.

Lastly, when the Commission adopted the requirement in § 39.13(c) that a DCO have a chief risk officer, it stated that, given the importance of the risk management function and the comprehensive nature of the responsibilities of a DCO's CCO under § 39.10, the Commission expected that a DCO's chief risk officer and its CCO would be two different individuals.[21] Commission staff noted this in a subsequent interpretation regarding the application of certain part 39 requirements to fully collateralized DCOs.[22] However, the Commission recognizes that, due to the limited risk profile of DCOs that clear only fully collateralized positions, it would be possible for a single individual to be both the CCO and the chief risk officer of such a DCO if the individual possesses the qualifications for both roles.

C. Financial Resources – § 39.11

The Commission is adopting various changes to § 39.11 to make the language more closely match that of Core Principle B, address inconsistencies in how DCOs treat excess collateral on deposit when conducting stress tests, ensure that customer funds are properly accounted for when a DCO is calculating its largest financial exposure, require DCOs to provide certain information to aid the Commission's review of their financial

[21] 76 FR 69334, 69363 (Nov. 8, 2011)

[22] CFTC Letter No. 14-05 (Jan. 16, 2014).

statements, and to clarify or conform a number of provisions. Unless stated otherwise below, the Commission did not receive any comments on the proposed amendments to § 39.11 and is adopting them as proposed.

1. Calculation of Largest Financial Exposure and Stress Tests – § 39.11(a)(1), (b)(1), (c)(1), and (c)(2)

The Commission is revising the language in § 39.11(a) to make it more consistent with Core Principle B.

Regulation 39.11(a)(1) requires a DCO to maintain financial resources sufficient to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions. The Commission is deleting § 39.11(b)(1)(i), which permits margin to be used to satisfy the requirements of § 39.11(a)(1), because the required initial margin amount on deposit for the clearing member will be applied before determining the largest financial exposure for the DCO in extreme but plausible market conditions. Therefore, the margin would not be available to also cover the exposure.

OCC supported the removal of § 39.11(b)(1)(i), under the assumption that a DCO could also net other margin it requires a clearing member to have on deposit when calculating its largest financial exposure. OCC requested that, if the Commission does not believe that a DCO should net such additional required margin on deposit, the Commission interpret such additional required margin on deposit as "[a]ny other financial resource deemed acceptable by the Commission" under current § 39.11(b)(1)(vi), proposed to be renumbered § 39.11(b)(1)(v).

The Commission is adopting additional minimum requirements that a DCO will have to follow in determining its financial exposure in accordance with § 39.11(c)(1). In particular, the Commission is adding § 39.11(c)(2)(i)(A) to require a DCO to calculate its largest financial exposure net of the clearing member's required initial margin amount on deposit. In response to questions and requests for clarification from OCC, ICE, FIA, and ISDA, the regulation specifies that this required margin includes any add-ons, such as concentration charges and liquidity charges, and only required margin (including add-ons) may be considered. In other words, the DCO is not permitted to take into account excess collateral on deposit. Additionally, the Commission is adopting § 39.11(c)(2)(ii) to require that when stress tests produce losses in both customer and house accounts, a DCO must combine the customer and house stress test losses of each clearing member using the same stress test scenario. New § 39.11(c)(2)(iii) allows a DCO to net gains in the house account with losses in the customer account, if permitted by its rules, but explicitly prohibits a DCO from netting losses in the house account with gains in the customer account. New § 39.11(c)(2)(iv), as modified to address comments, allows a DCO, with respect to a clearing member's cleared swaps customer account, to net customer gains against customer losses only to the extent permitted by the DCO's rules. In light of the comments, the Commission confirms that the purpose of § 39.11(c)(2)(iv) is to confirm that, while all customer positions must be included in calculating largest net exposure, netting between such positions must be done in a manner consistent with what is permitted by the DCO's rules. The Commission is also specifying that the requirements of § 39.11(c) do not apply to fully collateralized positions.

A number of commenters supported proposed § 39.11(c)(2)(i)(A). For example, SIFMA AMG stated that the various proposed revisions to § 39.11(c)(2) would require DCOs to make more prudent assumptions when calculating default fund requirements, improve the process of sizing the financial resources package, and standardize assumptions and enable customers to make apples-to-apples comparisons between DCOs. Mr. Barnard stated that proposed § 39.11(c)(2)(i)(A) would prudently focus a DCO's analysis on the resources that would actually be available to it during times of stress, further enhance the financial soundness of DCOs, and improve protection for market participants and the public. He also noted that the proposal is consistent with the PFMIs, which provide that central counterparties should not use collateral beyond the margin requirement for purposes of calculating their available resources,[23] and should increase efficiencies for industry while more prudently managing financial risk.

2. Assessments – § 39.11(d)(2)

The Commission is amending § 39.11(d)(2)(iv) by replacing the phrase "those obligations" with "the total amount required under paragraph (a)(1) of this section." The Commission did not receive any comments on this change.

The Commission did receive other comments on assessments. SIFMA AMG stated that the Commission should not allow DCOs to count unfunded liabilities, such as assessments, towards "cover one" and "cover two" calculations because they are highly likely to be unreliable during times of stress. Similarly, FIA and ISDA requested that the Commission amend § 39.11(d)(2) to prohibit the use of assessments because assessments

[23] *See* CPMI-IOSCO, Principles for Financial Market Infrastructures (Apr. 2012), available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf*.

are unfunded resources. Because the Commission had only proposed the clarifying change to § 39.11(d)(2)(iv) noted above and had not proposed to prohibit assessments entirely, the Commission would need to consider this in a separate proposal.

Lastly, ICE questioned the impact on § 39.11(d)(2)(iv) of the Commission's clarification of how a DCO must calculate its largest financial exposure under § 39.11(a)(1). In response, the Commission is further amending § 39.11(d)(2)(iv) to clarify that the value of the assessments may be determined by using the largest financial exposure in extreme but plausible market conditions prior to netting against required initial margin on deposit.

3. Liquidity of Financial Resources – § 39.11(e)

Regulation 39.11(e)(1)(ii) requires that the financial resources allocated by a DCO to meet the requirements of § 39.11(a)(1) (*i.e.*, its default resources) be sufficiently liquid to enable the DCO to fulfill its obligations as a central counterparty during a one-day settlement cycle. The Commission is adopting an amendment to change references to "daily settlement pay" in § 39.11(e)(1)(ii) to "daily settlement variation pay" in order to clarify that additional calls for initial margin should not be included in the calculation. It also is adopting clarifying changes to the text of § 39.11(e)(1)(iii) and (e)(2), and adding § 39.11(e)(1)(iv) to provide that a DCO is not subject to § 39.11(e)(1)(ii) for fully collateralized positions.

Regulation 39.11(e)(1)(ii) further requires that those resources include cash, U.S. Treasury obligations, or high quality, liquid, general obligations of a sovereign nation (*i.e.*, cash or cash equivalents), in an amount greater than or equal to the average of its clearing members' average pays over the last fiscal quarter. If that amount is less than

what a DCO needs to fulfill its obligations during a one-day settlement cycle, § 39.11(e)(1)(iii) permits a DCO to take into account a committed line of credit for the purpose of meeting the remainder of the requirement. The Commission is adopting new § 39.11(e)(3) to clarify that a committed line of credit or similar facility is a permitted default resource up to the amount provided for in § 39.11(e)(1)(ii), but that it may not be counted twice to meet the requirements of both § 39.11(e)(1)(ii) and § 39.11(e)(2). FIA and ISDA supported proposed § 39.11(e)(3) because it explicitly states the Commission's intention for a DCO to use a committed line of credit or similar facility under these circumstances.

4. Reporting Requirements – § 39.11(f)

Regulation 39.11(f) sets forth reporting requirements for DCOs concerning the financial resources they are required to maintain pursuant to § 39.11(a). After § 39.11(f) was adopted, the Commission adopted §§ 39.33(a) and 39.39(d), which set forth financial resources requirements for SIDCOs and subpart C DCOs, and financial resources requirements for the recovery and wind-down plans of SIDCOs and subpart C DCOs, respectively. The Commission is amending several provisions of § 39.11(f) by adding the words "and §§ 39.33(a) and 39.39(d), if applicable," to clarify that financial resources reporting by SIDCOs and subpart C DCOs should encompass all financial resources requirements applicable to them under part 39.

5. Financial Statements – § 39.11(f)(1)(ii)

The Commission is amending § 39.11(f)(1)(ii) to require a DCO to file with the Commission each fiscal quarter, or at any time upon Commission request, a financial statement of the DCO, including the balance sheet, income statement, and statement of

cash flows. Prior to this amendment, the regulation permitted the DCO to file the financial statement of the DCO or its parent company. Some DCOs that are part of a complex corporate structure file the financial statements of their parent companies, which makes it difficult to accurately assess the financial strength of the DCO.

The amendment to § 39.11(f)(1)(ii) also requires a DCO to prepare its financial statement in accordance with U.S. generally accepted accounting principles (U.S. GAAP), except that a DCO that is incorporated or organized under the laws of any foreign country may prepare its financial statement in accordance with either U.S. GAAP or the International Financial Reporting Standards issued by the International Accounting Standards Board (IFRS).

However, in response to comments, the Commission is not adopting the proposed amendments to § 39.11(f)(1)(ii) and § 39.11(f)(2)(i) that would have required the balance sheet to identify any assets allocated to satisfy the requirements of § 39.11(a)(1) or § 39.11(a)(2) as held for that purpose.

MGEX requested clarification regarding the application of the proposed revisions to § 39.11(f)(1)(ii) on an entity that is a DCO and also has non-DCO operations. MGEX noted that it is both a DCO and a DCM, and its financial statements show revenue and expenses from all sources and activities, not just those pertaining to MGEX's activities as a DCO. The Commission confirms that the revisions are intended to address the case of a DCO that is a separate legal entity from its parent company, in which case the Commission would expect to receive financial statements for the DCO disaggregated from that of its parent. In the case of a DCO with revenue and expenses from non-DCO activity, such as if the same legal entity were also a DCM, the Commission would not

require or expect the entity to separate its clearing-related and non-clearing-related financial information in its financial statements.

MGEX further suggested that the proposed revisions to § 39.11(f)(1)(ii) requiring that the financial statement provided be that of the DCO and not the parent company should only apply to DCOs that are part of a complex corporate structure, and not to simple parent/subsidiary structures. MGEX stated that compiling and submitting separate financial statements for a simple parent/subsidiary structure would result in increased expenses while providing no material benefit. The Commission is declining to adopt this suggestion because the Commission believes there is value in understanding the financial condition of a DCO separate from that of its parent company, as separate legal entities should be able to prepare separate financial statements, and because there is no bright line distinguishing between simple and complex corporate structures.

SIFMA AMG suggested that the Commission require DCOs to prepare quarterly and annual reports as required by § 39.11(f) in accordance with U.S. GAAP. Eurex and LCH supported the proposal in § 39.11(f)(1)(ii) to allow non-U.S. DCOs to use either U.S. GAAP or IFRS. LCH also recommended that the CFTC allow non-U.S. DCOs to report in currencies other than the U.S. dollar, stating that this would allow the quarterly reports to align with the reporting currency of the entity's audited year-end financial statements and would simplify the reconciliation process proposed in § 39.11(f)(2). The Commission is declining LCH's suggestion because if a DCO were to report in currencies other than the U.S. dollar, Commission staff would need to convert the currencies to U.S. dollars to properly analyze the reports, which would require staff to make decisions about exchange rates. To the extent that a DCO that does business in a

foreign currency must make conversions to U.S. dollars as part of preparing its financial statements, it is more appropriate to permit the DCO to determine the exchange rate it uses as long as the information is presented with sufficient clarity to allow Commission staff to evaluate the reasonableness of the decision.

CME supported the proposal in § 39.11(f)(1)(ii) and § 39.11(f)(2)(i) to identify assets required to meet the resource requirements of § 39.11(a)(1) and (2). However, CME stated that the balance sheet may not be the most appropriate financial statement to identify assets satisfying these requirements. CME noted certain requirements of U.S. GAAP that may preclude a company from including this information on its balance sheet. Eurex noted similar issues for financial statements prepared in accordance with IFRS. Given these concerns, the Commission is not adopting the proposed changes in this regard. However, the Commission encourages DCOs to identify the assets required to meet the resource requirements of § 39.11(a)(1) and (2) to the extent that they can, given applicable accounting standards. The Commission notes that providing such information would facilitate its review of DCOs' financial statements and potentially reduce the burden on DCOs to respond to staff inquiries regarding their financial statements and compliance with § 39.11(a)(1) and (2).

6. Timing of Financial Statements – § 39.11(f)(1)(iv)

The Commission is amending § 39.11(f)(1)(iv) to incorporate the language of current § 39.11(f)(4), which requires a DCO to submit its quarterly report no later than 17 business days after the end of the DCO's fiscal quarter (or at a later time as permitted by the Commission in its discretion in response to a DCO's request for an extension).

The amendment does not incorporate changes suggested by commenters, described below, because the reporting dates currently in effect are the same as those for FCMs under the Commission's regulations. The Commission believes that DCOs should be aligned with FCMs rather than DCMs because FCMs, unlike DCMs, hold initial margin and default funds and collect variation margin, which clearly and directly relate to the financial resources available to DCOs. In addition, the timing of the fourth quarter report allows Commission staff to verify the accuracy of a DCO's quarterly financial reports; numerous differences between that report and the year-end report may signal that the DCO has deficient processes and procedures pertaining to preparation of financial statements.

CME recommended that, for the first three quarters of the fiscal year, the due dates for submitting the DCO quarterly financial resource reports be aligned with the due dates for a DCM's submission of financial resource reports pursuant to § 38.1101(f)(4), which requires the reports to be filed no later than 40 calendar days after the end of the DCM's first three fiscal quarters. CME also recommended that the due date to submit a DCO's financial resource report for the fourth quarter of the fiscal year be aligned with the due date for submitting audited year-end financial statements pursuant to current § 39.19(c)(3)(iv) and proposed § 39.11(f)(2)(ii), which is not more than 90 days after the end of the DCO's fiscal year end. CME argued that the proposed requirement in § 39.11(f)(2)(iii)(A) for a DCO to submit a reconciliation where material differences exist between the balance sheet in the audited year-end financial statement with the balance sheet in the DCO's financial statement for the last quarter of the fiscal year, discussed below, would be unnecessary if the Commission harmonized the submission due date for

a DCO's financial resources report for the last quarter of the fiscal year with the submission due date for the audited year-end financial statements.

7. Reconciliation – § 39.11(f)(2)(iii)(A)

The Commission is amending § 39.11(f)(2)(iii)(A) to require a DCO to annually submit a reconciliation, including appropriate explanations, of its balance sheet in the audited year-end financial statement with the balance sheet in the DCO's financial statement for the last quarter of the fiscal year when material differences exist or, if no material differences exist, a statement so indicating. LCH recommended defining "material" as 10 percent of either the (1) six-month liquidity test, or (2) 12-month capital cost-based financial resources test. The Commission believes that DCOs should retain reasonable discretion to define "material" for these purposes and therefore declines to include this suggestion.

8. Documentation Requirements – § 39.11(f)(3)

Regulation 39.11(f)(3) requires a DCO to provide to the Commission certain documentation related to its quarterly financial reporting.[24] The Commission has determined that requiring this documentation each quarter is unnecessary where there is no change from the prior submission. Therefore, the Commission is revising § 39.11(f)(3) to clarify that a DCO must send the documentation to the Commission required under current subparagraphs (i) and (ii) (proposed to be renumbered as subparagraphs (i)(A) and (i)(B)) only upon the DCO's first submission under § 39.11(f)(1) and in the event of any change thereafter.

[24] The documentation explains (1) the methodology used to compute financial resources requirements, and (2) the basis for the DCO's determinations regarding valuation and liquidity requirements.

The Commission also is renumbering § 39.11(f)(3)(iii), which concerns providing copies of agreements establishing or amending a credit facility, insurance coverage, or other arrangement, as § 39.11(f)(3)(ii), and adding language specifying that copies of the agreements should evidence or support the DCO's ability to meet applicable financial resources and liquidity resources requirements.

9. Certification – § 39.11(f)(4)

After § 39.11 was adopted, the Division of Clearing and Risk advised DCOs that the quarterly financial report required under paragraph (f) should be accompanied by a certification as to the accuracy of the report signed by the person responsible for the accuracy and completeness of the report.[25] The Commission is codifying the staff guidance by amending § 39.11(f)(4) to require the certification because the Commission believes that requiring the person responsible to certify as to the accuracy of the report encourages that person to review the report more carefully and therefore reduces the likelihood of inaccuracies in the report.

D. Participant and Product Eligibility – § 39.12

Regulation 39.12 implements Core Principle C, which requires a DCO to establish admission and continuing eligibility standards for its members, as well as standards for determining the eligibility of agreements, contracts, or transactions submitted to the DCO for clearing. Several provisions in § 39.12 require a DCO to "adopt" or "establish" rules. The Commission is amending those provisions to require a

[25] Memorandum to All Registered DCOs from Ananda Radhakrishnan, Director, Division of Clearing and Risk, June 7, 2012.

DCO to "have" rules.[26] In addition, the Commission is amending § 39.12(b)(2), which requires a DCO to adopt rules providing that all swaps with the same terms and conditions are economically equivalent within the DCO, so that it explicitly applies only to those DCOs that clear swaps.

The Commission did not receive any comments on the proposed changes to § 39.12, and is adopting the changes as proposed.

E. Risk Management – § 39.13

The Commission is adopting several changes to § 39.13, which sets out risk management requirements for DCOs. Unless stated otherwise below, the Commission did not receive any comments on the proposed amendments to § 39.13 and is adopting them as proposed.

1. Risk Management Framework – § 39.13(b)

Regulation 39.13(b) requires a DCO to establish and maintain written policies, procedures, and controls, approved by its board of directors, which establish an appropriate risk management framework. The introductory heading to this provision states that it is a "[d]ocumentation requirement." The Commission is replacing"[d]ocumentation requirement" with "[r]isk management framework" and the words "establish and maintain" with "have and implement" to make it clear that a DCO is not only required to have a documented risk management framework but to put it into action.

[26] The Commission also proposed to renumber paragraphs (i)(A), (i)(B), and (ii) of § 39.12(a)(5) as paragraphs (ii), (iii), and (iv), respectively.

2. Limitation of Exposure to Potential Default Losses – § 39.13(f)

Regulation 39.13(f) requires that a DCO, "through margin requirements and other risk control mechanisms, shall limit its exposure to potential losses from defaults by its clearing members to ensure that" the DCO's operations would not be disrupted and non-defaulting clearing members would not be exposed to unanticipated or uncontrollable losses. Recognizing that a DCO cannot ensure protection from that which it cannot anticipate, the Commission is revising § 39.13(f) to require a DCO to "limit its exposure to potential losses from defaults by clearing members through margin requirements and other risk control mechanisms reasonably designed to ensure that…."

The Commission had proposed to change "to ensure that" to "to minimize the risk that." However, in this instance, the Commission has decided to adopt language suggested by commenters because the Commission believes that it better articulates the DCO's obligations. ICE supported replacing "ensure" with "minimize the risk" in § 39.13(f) and making conforming changes. However, FIA and ISDA expressed concern that the change, if interpreted to alter a DCO's existing obligations, would increase the potential for non-defaulting clearing members to be exposed to uncapped liability. FIA and ISDA suggested revising the language to instead require a DCO to "limit its exposure to potential losses from defaults by clearing members through margin requirements and other risk control mechanisms *reasonably designed to* ensure that…." In response to a comment from FIA and ISDA, the Commission notes that this change clarifies, but does not alter, a DCO's existing obligations under this provision.

3. Margin Requirements – § 39.13(g)

a. Methodology and Coverage – § 39.13(g)(2)

Regulation 39.13(g)(2)(i) requires that a DCO have initial margin requirements that are commensurate with the risks of each product and portfolio. The Commission is amending § 39.13(g)(2)(i) to delete the statement in the existing regulation that such risks "includ[e] but are not limited to jump-to-default risk or similar jump risk." The Commission had proposed to amend the regulation to keep this statement and add a statement that such risks also include "concentration of positions." However, upon considering comments on the proposal, the Commission is concerned that including and adding to a list of examples of types of risks might be interpreted to mean that a DCO does not have to consider risks not mentioned. The Commission reiterates that a DCO should consider a range of risks, including, for example, jump-to-default risk, concentration risk, correlation risk, and other risks associated with the particular products and portfolios it clears. However, the Commission further notes that DCOs have discretion with respect to how they identify, label, and address such risks; therefore, the Commission is declining to define such terms.

LCH commented in support of the proposed revisions to § 39.13(g)(2)(i). However, although FIA and ISDA agreed that a DCO should consider concentration risk when establishing initial margin requirements, they requested that the Commission define this term in a re-proposed rule. FIA and ISDA further suggested that concentration risk could be defined to include positions that cannot be closed in a two-day period. Alternatively, they suggested that concentration risk could be more broadly defined. FIA and ISDA recommended that initial margin should cover concentration risk over the period that it would take to liquidate a defaulting participant's positions, and that initial margin requirements should consider the concentration risk of open positions relative to

product liquidity and percentage of open interest. FIA and ISDA also recommended that a DCO's initial margin requirements evaluate concentration risk at an account level. Finally, FIA and ISDA requested that the Commission require in a re-proposal that a DCO consider other risk factors, such as correlation and pro-cyclicality, when determining its initial margin requirements. However, as explained above, the Commission has determined that including in § 39.13(g)(2)(i) a list of examples of types of risks might be interpreted to mean that a DCO does not have to consider risks not mentioned. Instead, a DCO should consider a range of risks based on the particular products and portfolios it clears, and it has discretion in how it identifies and addresses such risks.

b. Independent Validation – § 39.13(g)(3)

Regulation 39.13(g)(3) requires that a DCO's systems for generating initial margin requirements, including its theoretical models, be reviewed and validated by a qualified and independent party on a regular basis. The provision further provides that the validation may be conducted by independent contractors or employees of the DCO, as long as they are not responsible for the development or operation of the systems and models being tested. The Commission is adopting proposed amendments to this provision to specify that "on a regular basis" means annually and to also permit employees of an affiliate of the DCO to conduct the validations, as long as the affiliate's employees are not responsible for the development or operation of the systems and models being tested. In addition, the Commission is further modifying § 39.13(g)(3) to specify that, where no material changes have been made to a DCO's margin model, previous validations can be reviewed and affirmed as part of the annual review process,

as recommended by several commenters. The Commission is adopting this change because it agrees with commenters that it is unnecessarily burdensome to require DCOs to revalidate models that have not changed since the previous validation.

ICE expressed support for permitting employees of an affiliate of the DCO to conduct initial margin model validations. LCH also supported the proposed changes to § 39.13(g)(3). Nodal argued that requiring annual validations of a DCO's systems for generation of initial margin requirements, even for theoretical models, is unnecessary because theoretical models do not change from year to year. Nodal added that annual validations would present an undue burden for certain DCOs due to the significant cost and time involved in obtaining an independent validation. Nodal requested that, if the Commission requires annual validations as proposed, it exclude theoretical models from the annual validation requirement to the extent that they have not materially changed since the prior independent validation. CME commented that, in revising § 39.13(g)(3), the Commission should consider the provisions of the Bank Holding Company Supervision Manual, which allows banks to take varying approaches to model validations from year to year.[27] In particular, CME stated that, in some cases where no material changes have occurred, the manual suggests that previous validations could be reviewed and affirmed as part of the annual review process.

FIA and ISDA supported the proposal to replace the requirement to review and validate margin models on a "regular basis" with a requirement to do so "on an annual basis." They also supported allowing a DCO to exercise discretion concerning the extent

[27] Board of Governors of the Federal Reserve System, Division of Supervision and Regulation, *Bank Holding Company Supervision Manual – Model Risk Management*, Section 2126.0.5 (Feb. 2019), available at *https://www.federalreserve.gov/publications/files/bhc.pdf*.

of the annual validation process depending, for example, on whether material changes have been made to the margin model since the prior validation, and cited to the Bank Holding Company Supervision Manual as well.

FIA and ISDA also requested that the Commission withdraw the proposal to allow employees of an affiliate of a DCO to conduct an initial margin model validation and instead require in a re-proposed rule that a qualified and independent third party must conduct the initial margin model validation. FIA and ISDA argued that employees who validate an initial margin model used by more than one affiliated DCO may fail to analyze whether a single model is appropriate for different products cleared by different affiliated DCOs. FIA and ISDA further suggested that the Commission re-propose several adjustments to a DCO's initial margin model validation process to increase transparency. The Commission believes it is appropriate to permit a DCO's employees or employees of an affiliate of the DCO to conduct the validations, provided they are not responsible for development or operation of the systems and models being tested. Since § 39.13(g)(3) has been in place, the Commission has not encountered any issues with employees of a DCO conducting the validations; therefore, the Commission believes it is appropriate to permit employees of an affiliate of the DCO to conduct the validations.

c. Spreads and Portfolio Margins – § 39.13(g)(4)

To be consistent with other Commission regulations, the Commission is amending § 39.13(g)(4) to substitute the phrase "conceptual basis" for the phrase "theoretical basis" in the discussion of spread margin. LCH supported the proposed changes.

d. Back Tests – § 39.13(g)(7)

The Commission is adopting new § 39.13(g)(7)(iii) to clarify that, in conducting back tests of initial margin requirements, a DCO should compare portfolio losses only to those components of initial margin that capture changes in market risk factors.

LCH supported the proposed changes to § 39.13(g)(7)(iii). ICE agreed that portfolio back testing of the statistical performance of the core margin model should be solely based upon market risk factors that can be directly measured and tested. However, ICE commented that, when performing back testing to assess whether the DCO has collected sufficient margin to meet its coverage requirement, the DCO should include all of the margin model's charges and add-ons, "in other words, all of the margin resources available to mitigate the risk of the position (excluding any voluntary excess posted by a clearing member)." In contrast, although SIFMA AMG agreed that clarification is necessary in this regard, it suggested that margin add-ons, which it noted are outside of the model framework, should not be included when back testing a margin model. SIFMA AMG stated that excluding the impact of these and other similar add-ons will reduce the likelihood of misrepresenting the actual margin coverage produced by a DCO's models, as their inclusion may result in margin breaches going undetected. In addition, SIFMA AMG stated that margin add-ons are often calculated at the sole discretion of the DCO and are not readily replicable by market participants. SIFMA AMG further stated that DCOs should disclose these back-testing results at the contract level, rather than the account level, to increase transparency and facilitate enhanced risk monitoring by all market participants.

In response to the comments, the Commission notes that comparing portfolio losses only to components of initial margin that capture changes in market risk factors reduces the likelihood of misrepresenting the actual margin coverage produced by a DCO's models, as the inclusion of other components may result in margin breaches going undetected.

e. Gross Customer Margin – § 39.13(g)(8)(i)

Regulation 39.13(g)(8)(i) requires a DCO to collect initial margin on a gross basis for each clearing member's customer account(s). The Commission is revising § 39.13(g)(8)(i) to clarify that initial margin must be collected on a gross basis only at the end-of-day settlement cycle.

OCC supported the proposed changes. The Commission also received two comments specific to its statement in the Proposal that, notwithstanding the proposed change to the rule text, a DCO should also collect customer initial margin from its clearing members on a gross basis during any intraday settlement cycle in which the DCO collects customer initial margin if the DCO is able to calculate the margin accurately.[28] LCH stated that it supports the intraday collection of customer initial margin on a gross basis because it supports the risk management function of a DCO. By contrast, FIA and ISDA argued that the Commission should not encourage a DCO to collect gross customer initial margin during an intraday settlement cycle because it would create significant operational problems.

In response to the comment from FIA and ISDA, the Commission reiterates that it recommends that a DCO should collect customer initial margin from its clearing

[28] *See* Derivatives Clearing Organization General Provisions and Core Principles, 84 FR 22236.

members on a gross basis during any intraday settlement cycle in which the DCO collects customer initial margin, but only if it is able to calculate the margin accurately. The Commission further reiterates that it would not expect a DCO to collect customer initial margin on an intraday basis if it would create significant operational problems for the DCO or its clearing members.

Furthermore, the Commission is adopting amendments to § 39.13(g)(8)(i)(B) to require a DCO to have rules that require its clearing members to provide reports to the DCO each day setting forth end-of-day gross positions of each individual customer account within each customer origin of the clearing member. The Commission is requiring that the daily reports specify positions of "each individual customer account" instead of "each beneficial owner," as originally proposed, to be consistent with the information that DCOs must report to the Commission pursuant to § 39.19(c)(1), as discussed below.

OCC commented that the proposed changes to § 39.13(g)(8)(i)(B) would introduce a significant shift in the burden to maintain customer-level records from FCMs and introducing brokers to a DCO. OCC stated that virtually every FCM clears through multiple DCOs, so requiring a DCO to collect and report this customer-level information to the Commission does not in fact allow the Commission to appropriately understand the risks associated with individual customers without further aggregating the data that various DCOs receive from an individual FCM. OCC represented that it and its clearing members would need to make significant operational changes to obtain this information and report it daily, and OCC would need to make corresponding rule changes.

MGEX noted that while FCMs know and have a relationship with their customers, clearing members do not necessarily have such a relationship with the customers of FCMs for which they clear. Therefore, a rule requiring clearing members to report customer level information is impractical, and attempting to apply this requirement at the FCM level would similarly be problematic, as certain FCMs with omnibus accounts may not have a relationship with the clearing member's DCO.

ICE supported the transparency associated with reporting of additional customer level information, but noted that the Commission should further consider the costs to clearing members and DCOs of developing new operational systems and procedures that the proposal would necessitate, and consider ways to phase in any new requirements to allow for the necessary development of new operational systems and procedures, at both the DCO and clearing member levels. ICE commented that DCOs and market participants should also have the opportunity to consider whether the changes could affect other longstanding practices, such as the treatment by DCOs of the risk in the customer account on a net basis, and encouraged the Commission to work with and consult the industry as a whole to implement any changes to current practices.

f. Customer Initial Margin Requirements – § 39.13(g)(8)(ii)

Regulation 39.13(g)(8)(ii) provides that a DCO must require its clearing members to collect customer initial margin from their customers, "for non-hedge positions, at a level that is greater than 100 percent of the [DCO]'s initial margin requirements with respect to each product and swap portfolio." Shortly after this provision was first adopted, the Commission became aware that it was being interpreted by DCOs in a way that would have significantly increased margin requirements for customers in a way that

the Commission did not intend. This was addressed at the time through an interpretative letter issued by the Division of Clearing and Risk that accurately reflected the Commission's original intent.[29] The Commission is now amending the provision, consistent with the staff interpretation, to permit DCOs to establish customer initial margin requirements based on the type of customer account and by applying prudential standards that result in FCMs collecting customer initial margin at levels commensurate with the risk presented by each customer account.

The Commission received three comments in support of the proposed changes to § 39.13(g)(8)(ii) and one comment in opposition. OCC supported the proposed changes and stated, in response to a specific request for comment from the Commission, that further clarification on what would be considered "commensurate with the risk presented" is unnecessary. ICE supported the proposed changes to § 39.13(g)(8)(ii) giving DCOs discretion in determining the percentage by which customer initial margin requirements must exceed the DCO's clearing initial margin requirements. CME supported codification of the staff interpretation but was concerned that the proposed changes to § 39.13(g)(8)(ii) would shift the burden of determining the appropriate level of additional customer margin from FCM clearing members to DCOs. As a result, CME requested that § 39.13(g)(8)(ii) be further amended to state that "the [DCO] shall have reasonable discretion in determining clearing initial margin requirements for products or portfolios and whether and by how much customer initial margin requirements for categories of customers determined to have heightened risk profiles by their clearing

[29] CFTC Letter No. 12-08 (Sept. 14, 2012); see also Letter from Lisa Dunsky, Executive Director and Associate General Counsel, Chicago Mercantile Exchange Inc., to Ananda Radhakrishnan, Director, Division of Clearing and Risk (Aug. 29, 2012).

members must exceed, at a minimum, the [DCO]'s clearing initial margin requirements by a standardized amount." The Commission is adopting similar revisions, in order to confirm that the changes to § 39.13(g)(8)(ii) are not intended to shift the burden of determining the appropriate level of additional customer margin from clearing members to the DCO.

FIA and ISDA commented that the proposed change to customer initial margin requirements may impose an operationally impractical regime for clearing members to collect initial margin from customers, arguing that the proposed amendments would give DCOs too much discretion and encourage DCOs to apply differing measures to assess additional margin. FIA and ISDA believe that clearing members would benefit from a common approach to additional margin among DCOs. FIA and ISDA recommended that, regardless of whether the Commission adopts the proposed change, it should codify earlier no-action relief which clarifies that the initial margin requirements in § 39.13(g)(8)(ii) do not apply to security futures positions.

With respect to the applicability of § 39.13(g)(8)(ii) to security futures positions, the Commission notes that the interpretative guidance provided in CFTC Letter No. 12-08 is still in effect. The Commission further notes that it has received similar comments in connection with a recently proposed joint rulemaking issued by the Commission and the SEC on this topic, and believes that it is more appropriate to consider whether or not to codify this relief as part of that rulemaking.[30]

[30] Customer Margin Rules Relating to Security Futures, 84 FR 36434 (July 26, 2019).

g. Haircuts – § 39.13(g)(12)

Regulation 39.13(g)(12) requires a DCO to apply "haircuts" to the assets that it accepts in satisfaction of initial margin obligations, and to evaluate the appropriateness of the haircuts on at least a quarterly basis. Regulation 39.11(d)(1) requires a DCO to evaluate on a monthly basis its haircuts for assets that are used to meet the DCO's financial resources obligations set forth in § 39.11(a) (*i.e.*, its "cover one" default resources). The Commission is amending § 39.13(g)(12) to align it with § 39.11(d)(1) by requiring that a DCO evaluate the appropriateness of the haircuts that it applies to assets accepted in satisfaction of initial margin obligations on a monthly basis. Given that initial margin is held for risk management purposes, and the value of these assets may change frequently, the Commission believes it is appropriate to assess haircuts more frequently.

The Commission received one comment in support of the proposal and one comment in opposition. FIA and ISDA stated that the proposed change is appropriate given the frequent changes in the value of assets held for initial margin. LCH disagreed with the proposed change, stating that, in normal market conditions, haircuts do not significantly change, or may not change at all, from month to month. LCH suggested that haircut reviews continue to be required on a quarterly basis, but that the Commission enhance § 39.13(g)(12) by mandating that DCOs review haircuts more frequently in the event of specific scenarios, such as breach of back testing or high market volatility, which would affect the valuation and liquidity of eligible collateral.

4. Other Risk Control Mechanisms – § 39.13(h)

a. Risk limits – § 39.13(h)(1)

Regulation 39.13(h)(1)(i) requires a DCO to impose risk limits on each clearing member, by house origin and by each customer origin, in order to prevent a clearing member from carrying positions for which the risk exposure exceeds a specified threshold relative to the clearing member's and/or the DCO's financial resources. The Commission proposed to amend the provision to specify that risk limits should also be imposed to address positions that may be difficult to liquidate.

The Commission has determined not to adopt the proposed changes to § 39.13(h)(1) at this time, but will continue to consider this issue further. The Commission remains concerned about positions that may be difficult to liquidate, particularly concentrated positions. As the Commission mentioned in the Proposal, recent events, including a significant loss from a default at a central counterparty outside of the Commission's jurisdiction, highlight the importance of addressing such positions. However, the Commission believes that DCOs should address difficult-to-liquidate positions using the DCO's margin methodology and consider whether and what other measures may be appropriate.

OCC opposed the proposed change, in favor of addressing difficult-to-liquidate positions through a DCO's margin methodology. OCC argued that margin requirements can more effectively account for the liquidity risk associated with specific positions held by specific clearing members, because margin requirements can be tailored to the risks and particular attributes of each relevant product, portfolio, and market. The margin requirements can then serve as one input a DCO uses in determining the appropriate risk limits. FIA and ISDA noted that the proposed imposition of hard risk limits on positions that may be difficult to liquidate would be a significant departure from current risk

management practices for clearing members. FIA and ISDA suggested that the Commission should withdraw the proposed change to § 39.13(h)(1)(i) and consult with DCOs and clearing members about how to best risk-manage positions that are difficult to liquidate. LCH agreed that DCOs should have procedures in place to address clearing members with large positions that may be difficult to liquidate in the event of a default. However, LCH suggested that, rather than setting bright-line limits on the maximum size of such positions, the Commission should require DCOs to have measures in place, such as margin add-ons, to address concentration risk. LCH stated that this would be an appropriate approach because the mitigants against concentration risk of certain positions in any one clearing member would be built into the DCO's risk model. LCH further indicated that setting and maintaining such hard limits may result in market fragmentation or artificial limits that are not risk related and may inadvertently create disincentives to clearing.

b. Clearing members' risk management policies and procedures – § 39.13(h)(5)

Regulation 39.13(h)(5)(ii) requires a DCO to, on a periodic basis, review the risk management policies, procedures, and practices of each of its clearing members, which address the risks that such clearing members may pose to the DCO, and to document such reviews. The Commission is adopting an amendment to this regulation to clarify that DCOs should, having conducted such reviews, "take appropriate actions to address concerns identified in such reviews," and that the documentation of the reviews should include "the basis for determining what action was appropriate to take."

The Commission received one comment in support of the proposal and two comments in opposition. LCH supported the proposed changes regarding clearing

member risk management policies and procedures. FIA and ISDA stated that the proposed change that would require a DCO to take appropriate actions to address concerns resulting from a review of a clearing member's risk management policies and procedures is unnecessary. ICE opposed requiring DCOs to supervise or impose changes in the risk management policies of clearing members, and commented that any such requirement would be more appropriate at the designated self-regulatory organization (DSRO) level, rather than the DCO level.

In response to ICE's suggestion that clearing member risk reviews should be conducted by a DSRO, the Commission notes that not all clearing members are subject to the supervision of a DSRO. The Commission disagrees with FIA and ISDA's comment that requiring a DCO to take appropriate actions to address concerns resulting from a review of a clearing member's risk management policies and procedures is unnecessary. As the Commission stated in the Proposal, absent such follow-up, the reviews would lack purpose.

5. Cross-Margining – § 39.13(i)

The Commission is codifying its existing practices for evaluating cross-margining programs in new § 39.13(i), which requires a DCO that seeks to implement or modify a cross-margining program with one or more other clearing organizations to submit rules for Commission approval pursuant to § 40.5. However, the Commission is not adopting the proposed requirement that a DCO provide, at a minimum, specific information needed to facilitate the Commission's review of the rule filing. Rather, the Commission is requiring that a DCO submit information sufficient for the Commission to understand the risks that would be posed by the program and the means by which the DCO would

address and mitigate those risks. The Commission believes that leaving it to the discretion of the DCO to determine what information to provide, yet giving the Commission the ability to request any additional information it may need to conduct its review of a cross-margining program, is appropriate given that cross-margining programs can vary greatly, depending on the products, participants, and clearing organizations involved. The Commission notes, however, there may be instances where a cross-margining program would require approval beyond the § 40.5 submission. For example, a cross-margining program between a registered DCO and a clearing organization that is not registered with the Commission may require relief from section 4d of the CEA for FCM customers to be eligible to participate.

The Commission received one comment in support of the proposal and one comment in opposition. FIA and ISDA supported the proposal, stating that it would increase transparency and improve the ability of clearing members to manage the risks associated with positions subject to cross-margining. They recommended that the Commission consider including in its evaluation the credit and liquidity risk management, settlement, and default management-related principles identified in the PFMIs. In addition, FIA and ISDA suggested that the Commission should require DCOs participating in a cross-margining arrangement to consult with their respective clearing members.

OCC opposed the proposal to require a DCO to provide specific types of information, arguing that it would reduce the Commission's flexibility to determine what types of information are necessary for it to review in specific circumstances. OCC suggested that a DCO should not be required to provide each of the specified types of

information when it is requesting the Commission's approval to update an existing cross-margining program, where analyzing factors unrelated to the change for which it is requesting approval would create an unnecessary burden. OCC suggested that instead the Commission should issue guidance on what information it may require in its review of a cross-margining program. OCC further requested that, should the Commission nonetheless choose to require specific types of information in proposed § 39.13(i), the information should only be required when the Commission reviews a new cross-margining program and not when the Commission reviews changes to an existing cross-margining program. OCC also suggested that DCOs should be able to submit a cross-margining program under either § 40.5 or § 40.6(a), and requested that the Commission only apply the § 40.5 review process to a new cross-margining program.

In response to FIA and ISDA's comment on consulting with clearing members, the Commission notes that § 40.5(a)(8) requires a DCO to provide a brief explanation of any substantive opposing views expressed by its members that were not incorporated into the rule, or a statement that no such opposing views were expressed. The Commission recognizes that § 40.5(a)(8) does not require consultation with clearing members. Because the Commission did not propose this requirement, it cannot adopt it at this time but may consider it in conjunction with a future rulemaking.

The Commission considered OCC's recommendation that a DCO be able to submit cross-margining rules pursuant to § 40.6,[31] but has determined to adopt the

[31] The Commission has approved prior cross-margining arrangements pursuant to its rule approval process or by Commission order. *See* Derivatives Clearing Organization General Provisions and Core Principles, 84 FR 22238, n. 51 (discussing prior cross-margining arrangements approved by the Commission). In the discussion in the Proposal of prior cross-margining arrangements approved by the Commission, the Commission referenced certain orders that were amended to incorporate the provisions of Appendix B,

requirement to submit such rules under § 40.5 as proposed to give the Commission sufficient time to consider those rules. The Commission confirms, however, that it may expedite the rule approval process under § 40.5(g) where appropriate.

F. Treatment of Funds – § 39.15

The Commission is adopting as proposed amendments to § 39.15, which concerns a DCO's treatment of clearing member and customer funds. Regulation 39.15(b)(2)(ii) is being amended to permit a DCO to file rules for Commission approval pursuant to § 40.5, rather than request a Commission order, to allow the DCO and its clearing members to commingle cleared swaps, foreign futures, or foreign options with futures and options in an account subject to the requirements of section 4d(a) of the CEA (*i.e.*, the futures account). This is consistent with the existing requirements for commingling futures with cleared swaps in the cleared swaps customer account pursuant to § 39.15(b)(2)(i) (which is also being amended to permit foreign futures and foreign options to be held in the account). When § 39.15(b)(2)(ii) was first promulgated, the Commission, in reference to its decision to require an order rather than a rule approval to commingle cleared swaps with futures in a futures account, stated "at this time, it is appropriate to provide these additional procedural protections before exposing futures customers to the risks of swaps that may be commingled in a futures account."[32] The Commission, however, acknowledged that "as the Commission and the industry gain more experience with

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Framework 1 to the Commission's part 190 regulations. The Commission notes that Framework 1 would no longer apply in this context, as cross-margining arrangements would be approved pursuant to § 40.5 rather than by Commission order.

[32] Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69392.

cleared swaps, the Commission may revisit this issue in the future."[33] The Commission now believes that a request for a rule approval that complies with § 40.5 will provide the Commission with sufficient means to determine whether customer funds held in a futures account will be adequately protected if cleared swaps, foreign futures, or foreign options are also held in the account.

The Commission is also amending § 39.15(d) to require the "prompt," but not necessarily simultaneous, transfer of a customer's positions and related funds from one clearing member to another clearing member "as necessary." The Commission had proposed this change because, although a DCO may transfer positions from one clearing member to another, the DCO does not generally transfer funds.

ICE generally supported the proposed amendments to § 39.15, including allowing commingling of swaps in a futures account pursuant to rules submitted under § 40.5 rather than pursuant to a separate Commission order under section 4d of the CEA. LCH, FIA, and ISDA supported the proposed amendment to § 39.15(d) to require the prompt, but not necessarily simultaneous, transfer of a customer's positions and related funds. FIA and ISDA noted that clearing members transfer positions before related collateral is transferred under current market practice. LCH noted that proposed § 39.15(d) reflects how funds are transferred, especially where there is third-party involvement and the simultaneous transfer of funds may not be possible.

The Commission did not receive any comments on the proposed technical changes to § 39.15(b)(2)(iii) and (e) and is adopting those changes as proposed.

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[33] *Id.*

G. Default Rules and Procedures – § 39.16

1. Default Management Plan – § 39.16(b)

Regulation 39.16(b) requires a DCO to have a default management plan and, among other things, test the plan at least on an annual basis. The Commission is adopting an amendment to § 39.16(b), as further modified in response to a comment from FIA and ISDA, to require that the DCO include clearing members and participants in a test of its default management plan on at least an annual basis to the extent the plan relies on their participation. The Commission continues to believe, as noted in the Proposal, that a DCO should ensure that a sufficient portion of its clearing membership participates in such testing.

OCC supported the proposed change but stated that a DCO should have broad discretion to determine whether a "sufficient portion" of its clearing membership is participating. OCC noted that the number of clearing members that participate in a default management test is not necessarily indicative of whether a DCO's default management plan has been tested effectively, and that other factors must also be considered.

FIA and ISDA generally supported the proposed change but recommended that the rule refer to clearing members and "participants" so that, if a DCO's rules allow non-clearing members to participate in an auction of a defaulting clearing member's positions, a sufficient portion of such participants should be required to participate in the testing of the DCO's default management plan. FIA and ISDA further suggested that participation in testing should be tied to asset classes so that only clearing members that carry positions, or participants that trade, in a particular asset class are required to participate in

tests of a DCO's default management plan for that particular asset class. Lastly, FIA and ISDA recommended that DCOs should be required to coordinate the testing of their respective default management plans so that the requirement to participate in testing of the plan does not place an undue burden on clearing members.

Nodal commented that the requirement to include clearing members in a test of a DCO's default management plan is not necessary for a DCO that does not rely exclusively on clearing member auctions. Nodal requested that the Commission limit the application of the proposed rule, if adopted, to those DCOs that primarily rely on a clearing member auction process in their default management plans, rather than applying it to all DCOs.

As to FIA and ISDA's suggestion that participation in testing should be tied to asset classes, the Commission believes that this decision is in the DCO's discretion. Lastly, as to FIA and ISDA's recommendation that DCOs should be required to coordinate the testing of their respective default management plans, the Commission encourages DCOs to coordinate the testing of their default management plans to the extent possible to avoid placing an undue burden on clearing members and participants.

2. Default Procedures – § 39.16(c)

a. Default committee – § 39.16(c)(1)

Regulation 39.16(c) requires a DCO to adopt procedures that would permit the DCO to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a default by one of its clearing members. The Commission proposed to amend § 39.16(c)(1) to require a DCO to have a default committee that would be convened in the event of a default involving substantial or

complex positions to help identify market issues with any action the DCO is considering. The default committee would be required to include clearing members and could include other participants to help the DCO efficiently manage the house or customer positions of the defaulting clearing member. In light of the strong divergence in the views expressed in the comments received on this proposal, the Commission has determined not to adopt the proposed changes to § 39.16(c)(1) at this time. The Commission wishes to give industry stakeholders some time to come closer to consensus on this issue.

Some comments generally supported the proposal. MFA supported the proposal to allow non-clearing members to participate in a DCO's default committee. MFA noted, however, that the proposal permits but does not require customer participation, and requested that the Commission affirmatively mandate customer involvement. MFA understands that DCOs already have the authority to voluntarily include customers in their default committees, but that they have chosen not to do so.

FIA and ISDA generally supported the proposed requirement that a DCO have a standing default committee. They recommended, however, that, absent exigent circumstances, the default committee convene whenever a material default occurs, not only when a default involving substantial or complex positions occurs. FIA and ISDA also supported the proposed requirement that the default committee include clearing members, but they recommended that clearing members be allowed to voluntarily participate on default management committees.

Mr. Saguato supported the proposal to have clearing member and customer participation on a DCO's default committee. Mr. Saguato suggested that the Commission explore the costs and benefits of further increasing and formalizing the role of clearing

members and their customers in the default process, as Mr. Saguato believes clearing members should have a primary role in setting default procedures. Furthermore, SIFMA AMG agreed that DCOs should have a standing committee to address all defaults.

Other comments opposed the proposal. ICE did not believe that requiring the use of a default committee that includes clearing members and other participants is advisable. ICE noted that it is not clear what criteria would be used to determine whether a default scenario is "complex" or "substantial," or who would make the determination. ICE commented that it is not feasible for these and other considerations to be addressed in a rule, which therefore weighs against mandating the use of a default committee.

MGEX urged the Commission to permit a DCO's pre-existing risk or risk management committee to also serve as the default committee. MGEX indicated that allowing this type of dual-purpose committee would offer smaller entities with less complex product offerings a more immediate and efficient implementation, while avoiding the potential difficulty in finding sufficient clearing member interests to fill two separate committees.

CME commented that the proposal to require a default committee and clearing member participation on that committee risks unnecessarily prolonging and overcomplicating the default management process. CME also stated that a DCO's default management plan should account for the risks from substantial and/or complex portfolios, and these types of portfolios should be addressed in the design and testing phases of a DCO's default management plan and its day-to-day risk management. Lastly, CME noted that providing information on a defaulted clearing member's portfolio to the clearing members on the DCO's default committee, independent of their participation in

subsequent liquidation or auction processes, increases the risk of information leakage and disadvantageous pricing.

Nodal commented that requiring a DCO to have a default committee that includes clearing members or other participants is not likely to assist in efficiently managing the positions of the defaulting member; instead, it would add unnecessary complexity to what is already an efficient process. Nodal further stated that having clearing members on a default committee could create the potential for conflicts for any clearing member or participant selected, as well as introduce an element of self-interest or potential gaming within the decision-making of the default procedure and response. Finally, OCC commented that "substantial or complex positions" should not include exchange-traded products.

b. Declaration of default – § 39.16(c)(2)(ii)

The Commission is adopting an amendment to § 39.16(c)(2)(ii) to require that a DCO have default procedures that include public notice on the DCO's website of a declaration of default. However, the final rule differs from the proposal in that it does not require "immediate" public notice of a default. Instead, the final rule is silent on the timing of the notice. The Commission believes that a DCO should provide public notice as quickly as possible, taking into account the potential negative impact that it might have on the DCO's ability to manage the default.

The Commission had requested comment as to whether the timing of the announcement would potentially impact the market or the DCO's ability to manage the default. SIFMA AMG agreed with the proposal to require a DCO's default procedures to include immediate public notice on the DCO's website of a declaration of default. CME

recommended that the Commission permit DCOs to exercise discretion on the timing of a public notice of a declaration of default where such notification could negatively impact the ability of the DCO to manage the default. CME noted that mandatory immediate public notification runs the risk of causing disadvantageous pricing for liquidation or auctions, which could increase the costs to the DCO of managing the clearing member default, and if losses are incurred, could ultimately increase the risk of mutualizing losses among its clearing members.

Mr. Saguato commented that requiring immediate public notice of a declaration of default is unnecessary and potentially counterproductive to an effective default management process and should not be adopted as proposed. Mr. Saguato further stated that markets should be notified only at the completion of the default management process, to avoid the risk of spillovers.

OCC suggested that the Commission consider whether "prompt" public notice on the DCO's website would be more appropriate for consistency with the timing of other activities a DCO must perform pursuant to its default management plan and the responsibility of a clearing member to provide the DCO with prompt notice if it becomes insolvent. OCC noted that requiring immediate public notice may result in a DCO notifying the public of a default before the DCO has complete information about the default, which may trigger market panic before the DCO is able to understand the circumstances giving rise to the default and the market impact.

Eurex opposed the requirement to provide immediate public notice, arguing that it could adversely affect the DCO's ability to manage a default and may interfere with the DCO's existing notification practices with respect to porting, for example. Nodal, FIA,

and ISDA noted that the timing of an announcement of a default could potentially affect the market and the ability of the DCO, clearing members, and customers to manage the risks and consequences of the default. Therefore, Eurex, Nodal, FIA, and ISDA recommended that the Commission allow a DCO to have flexibility in the manner and timing of these notices. MGEX generally agreed that public notice of a default is vital for promoting the integrity and stability of financial markets, but suggested that the Commission give DCOs discretion with respect to the timing of posting such notice, which would allow the DCO to consider the nature of the default and any circumstances warranting flexibility.

ICE commented that, depending on the facts and circumstances of a default, an immediate announcement could potentially impact the market and the DCO's ability to manage the default. ICE therefore suggested that DCOs should be required to provide public notice of a default "as soon as practicable under the circumstances."

c. Allocation of defaulting clearing member's positions – § 39.16(c)(2)(iii)(C)

Regulation 39.16(c)(2)(iii)(C) requires any allocation of a defaulting clearing member's positions to be proportional to the size of the participating or accepting clearing member's positions in the same product class at the DCO. The Commission is adopting an amendment to this provision to provide that the DCO shall not require a clearing member to bid for a portion of, or accept an allocation of, the defaulting clearing member's positions that is not proportional to the size of the bidding or accepting clearing member's positions in the same product class at the DCO. This amendment is intended to clarify that a clearing member that wishes to voluntarily bid for or accept more than its proportional share should be allowed to do so, provided that the clearing

member has the ability to manage the risk of the new positions. It also clarifies that the provision applies to both auctions and allocations.

The Commission had proposed to further amend § 39.16(c)(2)(iii)(C) to provide that the size of the participating or accepting clearing member's positions in the same product class at the DCO should be measured by the clearing initial margin requirement for those positions. The Commission requested comment as to whether the Commission should require DCOs to take into consideration other indicators of active participation in a market, such as open interest, volume, and/or other criteria. All of the commenters opposed the proposed change, arguing that there are many factors that should be taken into consideration. The Commission found the comments persuasive and therefore is not adopting the proposed change.

CME commented that initial margin required as the basis for determining limits on potential bidding and allocation requirements under proposed § 39.16(c)(2)(iii)(C) may offer a poor approximation for the risk management capacity, capital availability, and credit quality of a clearing member. CME suggested that a given clearing member's initial margin requirements at the time of a clearing member default are a function of the size and directionality of the clearing member's portfolio, the variance of which over time creates an arbitrary standard by which to limit the ability of a DCO to require a clearing member to bid on a defaulter's portfolio. Therefore, CME suggested that, to the extent a limit on forced bidding or allocations is imposed, it should be based on a clearing member's risk management capacity, capital sufficiency, and credit quality, not solely its initial margin requirement.

ICE disagreed that mandatory bidding, or other auction terms, should be set by regulation; rather, they should be left to the DCO to determine in its rules and procedures, subject to regulatory oversight. ICE noted that there is no single approach to determining the level of a mandatory bid, or other relevant terms of participation.

In response to the Commission's request for comment as to whether it should require DCOs to take into consideration other indicators of active participation in a market, MGEX observed that DCOs already have ample tools to handle these situations, such as security deposits and various forms of margin, which take different risk factors into consideration. OCC stated that the amount of initial margin a clearing member holds at a DCO for a given product or product class is not always a good indicator of that member's qualification to bid on or accept an allocation of certain products or product classes. OCC argued that a DCO should be given discretion to consider several criteria, including a clearing member's initial margin for a given product or product class, open interest, volume, and risk management capabilities.

3. Fully Collateralized Positions – § 39.16(e)

In response to a request from Nadex, the Commission is adopting new § 39.16(e) to provide that a DCO may satisfy the requirements of paragraphs (a), (b), and (c) of § 39.16 (which relate to a DCO's default management plan and procedures) by having rules that permit it to clear only fully collateralized positions. This rule was not included in the Proposal, but the Commission believes it is appropriate to include it in the final rule because it is consistent with other exceptions for fully collateralized positions adopted herein.

Nadex requested that the Commission further amend § 39.16 to indicate that the requirements thereof do not apply to DCOs that clear only fully collateralized contracts. Nadex noted that in 2014, in response to its request for interpretative relief, the Division of Clearing and Risk issued an interpretative letter stating that Nadex's fully collateralized requirements satisfy the requirements of § 39.16.[34] The letter indicated that, because Nadex requires 100 percent of the funds necessary to fully collateralize a clearing member's positions to be on deposit with Nadex before the trade is executed, Nadex has eliminated the potential for a clearing member default.

H. Rule Enforcement – § 39.17

Regulation 39.17(a)(1) requires a DCO to maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and the resolution of disputes. The Commission is adopting an amendment to § 39.17(a)(1), as proposed, to explicitly state that that this applies to both the DCO's and its members' compliance with the DCO's rules.

Regulation 39.17(b) permits a DCO's board of directors to delegate its responsibility for compliance with the requirements of § 39.17(a) to the DCO's risk management committee. The Commission is amending § 39.17(b) by replacing "risk management committee" with "an appropriate committee."

FIA and ISDA supported the proposed amendments on the assumption that the Commission does not seek to impose any new obligations on clearing members. ICE also supported the proposed amendments and suggested that the Commission should

[34] *See* CFTC Letter No. 14-05 (Jan. 16, 2014).

consider permitting a DCO's board to broaden the delegation of this responsibility to the president of the DCO or an equivalent officer.

The Commission confirms that it is not seeking to impose any new obligations on clearing members. Rather, the purpose of the amendment is to remind DCOs of their obligation to comply with their own rules as well as enforce them against their clearing members. The Commission, however, declines to adopt ICE's suggestion regarding the scope of permissible delegation at this time; the Commission may consider it in a future proposal where comment could be sought.

I. Reporting – § 39.19

Regulation 39.19 implements Core Principle J, which requires that each DCO provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the DCO. The Commission is amending § 39.19 to clarify certain existing requirements, and also to adopt multiple new reporting requirements. These changes to § 39.19 will enhance the Commission's ability to conduct effective and efficient oversight of DCO compliance with the DCO Core Principles and Commission regulations. The Commission received comments on a number of the proposed changes to § 39.19. As further detailed below, the Commission modified several of the proposed requirements in response to comments. Unless stated otherwise below, the Commission did not receive any comments on the proposed amendments to § 39.19 and is adopting them as proposed.

1. General – § 39.19(a)

The Commission is revising the text of § 39.19(a) to match the text of Core Principle J. The revisions are not meant to alter the meaning of the provision.

2. Submission of Reports – § 39.19(b)

Regulation 39.19(b)(1) requires a DCO to submit the information required by the section to the Commission electronically and in a format and manner specified by the Commission, unless otherwise specified by the Commission or its designee. To simplify the text while retaining the originally-intended flexibility, the Commission is deleting the phrase "[u]nless otherwise specified by the Commission or its designee" and the term "electronically." The Commission is also adding new § 39.19(b)(2) to require that when making a submission pursuant to the section, an employee of a DCO must certify that he or she is duly authorized to make such a submission on behalf of the DCO. This provision codifies existing practices with respect to the use of the CFTC Portal for submissions pursuant to § 39.19. Finally, the Commission is removing existing § 39.19(b)(3) and moving the definition of "business day" to § 39.2, as discussed above. Existing § 39.19(b)(2) is renumbered as § 39.19(b)(3). The Commission continues to believe, as noted in the Proposal, that it is appropriate to codify existing practices with respect to the use of the CFTC Portal for submissions pursuant to § 39.19.

ICE opposed the proposal to codify the certification requirement in § 39.19(b)(2). ICE asserted that the requirement is unnecessary because it is extraordinarily unlikely that unauthorized submissions are being made by DCO personnel. ICE further argued that this requirement creates an unnecessary compliance burden. Nadex requested clarification regarding this requirement, asking whether a DCO would be required to maintain separate documentation that identifies the employees authorized to make submissions on behalf of the DCO. Nadex also requested clarification regarding which DCO employees have the authority to authorize other employees to make submissions for

the DCO. Lastly, Nadex requested clarification as to whether the certification should be included in the text of the submission or if it will appear in the CFTC Portal in the form of a confirmation statement.

In response to ICE's comment, the Commission notes that, although they are not common, unauthorized submissions have occurred. In response to Nadex's questions, the Commission notes that DCOs have discretion to determine who is authorized to make submissions on their behalf and, under the rule, they would not be required to maintain separate documentation that identifies the employees authorized to make submissions on behalf of the DCO. With respect to the location of the certification, the Commission will incorporate the certification into the section of the portal form where users certify as to the accuracy and completeness of the submission. Completing this section of the portal form will satisfy the certification requirements of § 39.19(b)(2).

3. Daily Reporting of Information – § 39.19(c)(1)(i)

Regulation 39.19(c)(1)(i) requires a DCO to report to the Commission on a daily basis margin, cash flow, and position information for each clearing member, by house origin and by each customer origin. The Commission is amending § 39.19(c)(1)(i) to require a DCO to also report margin, cash flow, and position information by individual customer account. This is information that DCOs currently provide in accordance with the Part 39 Reporting Guidebook,[35] which requests that DCOs provide clearing members' customer information, but also "acknowledges that customer level information may not

[35] The U.S. Commodity Futures Trading Commission Part 39 Reporting Requirements for Derivatives Clearing Organizations, Guidebook for Daily Reports, v.0.9.2, Dec. 2017 (Part 39 Reporting Guidebook) provides instructions and technical specifications for daily reporting under § 39.19(c)(1)(i).

be available to all DCOs."[36] Additionally, the Commission is specifying "individual customer account," as individual customers may have multiple accounts, which should be reported separately. The amendments will also require DCOs provide any legal entity identifiers and internally-generated identifiers within each customer origin for each clearing member, to the extent that the DCO has this information. Lastly, the amendments to § 39.19(c)(1)(i)(D) specify that, with respect to end-of-day positions, DCOs must report the positions themselves (*i.e.*, the long and short positions) as well as risk sensitivities[37] and valuation data[38] that the DCO generates, creates, or calculates in connection with managing the risks associated with such positions.

The final rule differs from the proposal in order to clarify that subparagraph (D) does not require a DCO to calculate risk sensitivities on the Commission's behalf. Rather, the rule requires a DCO only to report the risk sensitivities and valuation data for end-of-day positions that the DCO generates, creates, or calculates in connection with managing the risks associated with those end-of-day positions. The final rule is also modified to provide that a DCO is required to provide any legal entity identifiers and internally-generated identifiers for each individual customer account only if the DCO has this information associated with an account.

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[36] Part 39 Reporting Guidebook, Section 2.1.2.2, Client Account Information, p. 5.

[37] Risk-sensitivities are different measures of the impact of changes in underlying factors on the value of the positions. For example, an interest rate delta describes the theoretical profit or loss (P&L) that results from a one basis point increase in a currency's interest rate curve. A delta ladder describes a series of sensitivities for different maturity points (tenors) where each "rung" represents an increasing maturity point or tenor along the zero rate curve term structure. In the context of options, examples of risk sensitivities would be the different Greeks—for example, delta, gamma, vega, and theta.

[38] Valuation data refer to variables and inputs that reflect current market conditions, as well as expectations for the future. In the case of credit default swaps, valuation models rely on, for example, risk neutral default probabilities of swaps, forward credit spreads for different maturities. For interest rate swaps, valuation models require discount factors.

The Commission notes that the changes to § 39.19(c)(1)(i) to require reporting of information "by each individual customer account" are meant to reflect the information that DCOs currently report, to varying degrees, as explained above. The Commission notes that the requirement to report information "by each individual customer account" does not require a DCO to mandate that its clearing members look through an omnibus account that the clearing member carries for another registrant to ascertain the customers of that registrant. Similarly, in addition to providing for reporting by individual customer account, the daily reporting specifications have for several years included fields for reporting certain risk sensitivities, as well as reporting unique customer identifiers or legal entity identifiers. Ultimately, the changes to § 39.19(c)(1)(i) are not intended to require DCOs to report any information that they do not currently have, or do not currently report, subject to any operational or technological limitations that have been discussed with Commission staff. When Commission staff determines in the future that additional information regarding risk sensitivities and valuation data is needed, staff will engage with the DCOs, consistent with past practice, to facilitate efficient and effective reporting of this data.

Several commenters appeared to have adopted the view that the proposed amendment to § 39.19(c)(1)(i) to include individual customer account information would be a significant departure from existing requirements, when in fact this change is not intended to meaningfully alter the existing reporting structure, except to the extent that, as clarified below, the information that DCOs already are providing to the Commission is now subject to a mandatory reporting requirement. MGEX, ICE, and OCC opposed the proposed amendments to § 39.19(c)(1)(i) to require DCOs to report the required

information by individual customer account. MGEX stated that reporting margin and cash flows by individual customer account is problematic because some DCOs currently do not calculate variation margin by individual customer account, and therefore, are not in a position to provide that data. MGEX stated that this is also problematic to the extent that the proposal would require a DCO to impose rules on non-clearing member FCMs that clear through an omnibus account at a clearing member FCM, where the DCO does not have a direct relationship with the non-clearing member FCM. Lastly, MGEX stated that complying with this proposed requirement would require a significant undertaking by DCOs. MGEX maintained that the current daily reporting structure strikes an appropriate balance between providing the Commission with sufficient information without being overly burdensome.

ICE asserted that, given that the Commission has not previously required DCOs to report individual customer information for futures positions, and given the substantial time and resources that DCOs will need to expend related to such reporting, the Commission should consult with industry further before adopting the proposed changes.

OCC asserted that if the Commission wishes to obtain information regarding individual customers, the Commission should amend the regulations governing FCMs and introducing brokers (IBs), rather than obtaining that information from DCOs. OCC also stated that clearing members may not have individual customer account information; for example, when clearing members receive omnibus position data from IBs, which do not include individual customer positions. OCC also suggested that the Commission would face practical challenges in connecting individual customer data from multiple sources—various FCMs and IBs—across DCOs. OCC further stated that, while those

DCOs that clear swaps already report on a daily basis certain individual customer-level information for swap transactions, a DCO such as OCC that does not clear swap transactions does not currently have the infrastructure necessary to collect and report customer-level information daily.

Additionally, OCC opposed the specific requirement that DCOs calculate risk sensitivities on the Commission's behalf. OCC argued that risk sensitivities may be calculated in a variety of ways depending on the assumptions underlying the calculations and, under the proposal, the Commission would have the raw data necessary to calculate risk sensitivities based on its own assumptions and inputs. With respect to the proposed requirement to report risk sensitivities and valuation data, ICE requested that the Commission clarify what information should be reported, on what basis, and with what parameters.

Alternatively, OCC suggested that the Commission establish an effective date for these requirements that adequately accounts for the changes to systems, rules, and procedures that DCOs will need to make to comply with the requirements. OCC also requested that the Commission clarify how it would expect a DCO to calculate cash flows and valuation data, and clarify the format in which such information must be submitted. With respect to "cash flows" specifically, OCC requested that the Commission clarify whether "cash flows" include customer-level initial margin, mark-to-market value changes, changes in collateral value, or other components.

OCC requested that the Commission clarify that, although proposed § 39.19(c)(1)(i)(D) would require a DCO to provide any legal entity identifiers and internally-generated identifiers for individual customer accounts, this requirement does

not require a DCO to obtain from its clearing members a legal entity identifier for each customer, and does not require a DCO to independently validate this information. CME suggested that proposed § 39.19(c)(1)(i) be modified to require that DCOs have rules that require clearing members to report individual customer account information to the DCO, using legal entity identifiers to identify the customers, and that the provision also specifically require that DCOs report customer information by "each individual account carried for a customer." CME asserted that requiring legal entity identifiers will allow DCOs to aggregate customer exposures across clearing members, and will allow the Commission to use the reporting information to aggregate those exposures across DCOs.

FIA and ISDA expressed concern regarding the burdens that proposed § 39.19(c)(1) may impose on clearing members. Specifically, FIA and ISDA stated that the large trader position reporting requirements and the ownership-and-control reporting requirements are based upon account control, while the proposed daily reporting requirements are based upon account ownership. FIA and ISDA stated that if clearing members will be required to provide new information to the DCO so that the DCO can comply with the new daily reporting requirement for individual customer accounts, then the Commission should conduct a cost-benefit analysis of this requirement as it pertains to clearing members and provide clearing members an opportunity to comment on the proposed requirement.

ICE suggested that the Commission further modify § 39.19(c)(1)(i) to move the reporting deadline from 10:00 a.m. to 12:00 p.m. ICE asserted that the current deadline provides insufficient time for operational processes related to data finalization. ICE also asserted that complying with the 10:00 a.m. deadline would become more difficult if the

additional reporting requirements discussed above are added. LCH requested that the Commission delay the compliance date for these changes until after the Commission has updated its Part 39 Reporting Guidebook to clarify the specific information to be reported in relation to individual customer accounts.

4. Daily Reporting on Securities Positions – § 39.19(c)(1)(ii)(C)

The Commission is adopting the changes to § 39.19(c)(1)(ii)(C) as proposed. Regulation 39.19(c)(1)(i) requires DCOs to submit certain information to the Commission on a daily basis, *e.g.*, initial margin requirements, initial margin on deposit, daily variation margin, other daily cash flows such as option premiums, and end-of day positions. Paragraph (c)(1)(ii)(C) instructs DCOs to provide the required information for all securities positions that are held in a customer account subject to section 4d of the CEA or are subject to a cross-margining agreement. To avoid ambiguity and more precisely articulate the scope of paragraph (c)(1)(ii)(C), the Commission is inserting subparagraph numbering between the clauses in paragraph (c)(1)(ii)(C) which relate to securities positions held in a customer account or subject to a cross-margining agreement. The Commission did not receive any comments on this proposed change. In response to a request for clarification from CME, the Commission confirms that, where both participants in a cross-margining program are DCOs, the DCO clearing the securities positions must provide the securities position information.

5. Quarterly Reporting – § 39.19(c)(2)

The Commission is adopting the changes to § 39.19(c)(2) as proposed. Regulation 39.19(c)(2) requires a DCO to submit to the Commission the financial resources report required by § 39.11(f). The Commission adopted § 39.19(c)(2) so that

each DCO reporting requirement would be included in § 39.19. The Commission is revising the text of § 39.19(c)(2) to be more consistent with the text of § 39.11(f); *i.e.*, a DCO must provide to the Commission each fiscal quarter, or at any time upon Commission request, a report of the DCO's financial resources as required by § 39.11(f)(1). The Commission did not receive any comments on this proposed change.

6. Audited Year-End Financial Statements – § 39.19(c)(3)(ii)

The Commission is adopting the changes to § 39.19(c)(3)(ii) as proposed. Regulation 39.19(c)(3)(ii) requires a DCO to file with the Commission its audited year-end financial statements or, if there are no financial statements available for the DCO, the consolidated audited year-end financial statements of the DCO's parent company. Consistent with the goal of centralizing DCO reporting obligations in § 39.19, the purpose of this provision is to include in § 39.19 the requirement in § 39.11(f)(2) that DCOs submit audited year-end financial statements to the Commission. The Commission did not receive any substantive comments on § 39.19(c)(3)(ii).

7. Time of Report – § 39.19(c)(3)(iv)

The Commission is adopting the changes to § 39.19(c)(3)(iv) as proposed. Regulation 39.19(c)(3)(iv) requires a DCO to submit concurrently to the Commission all reports required by paragraph (c)(3) within 90 days after the end of the DCO's fiscal year and only permits the Commission to provide an extension of time if it determines that a DCO's failure to submit the report on time "could not be avoided without unreasonable effort or expense." The Commission is eliminating this requirement to provide itself with the flexibility to grant extensions of time under additional circumstances when appropriate. Additionally, the Commission is removing the requirement that reports be

submitted concurrently, which will provide DCOs with the flexibility to submit reports required under § 39.19(c)(3) as they are completed. The Commission did not receive any comments on these changes.

8. Decrease in Financial Resources – § 39.19(c)(4)(i)

The Commission is adopting a technical amendment to § 39.19(c)(4)(i), which concerns reporting of a decrease in a DCO's financial resources. The amendment adds a reference to the financial resources requirements of § 39.33. The Commission also is renumbering the subparagraphs for the sake of clarity. The Commission did not receive any comments on these changes.

9. Decrease in Liquidity Resources – § 39.19(c)(4)(ii)

The Commission is adopting new § 39.19(c)(4)(ii)[39] to require that a DCO report a decrease of 25 percent or more in the total value of the liquidity resources available to satisfy the requirements under §§ 39.11(e) and 39.33(c). Existing reporting requirements under § 39.11(f)(1)(ii) provide the Commission with notice of any change in a DCO's liquidity resources over the course of a fiscal quarter. In contrast, this new provision will provide the Commission with notice if a DCO has a significant decrease in liquidity resources either from the last quarterly report submitted under § 39.11(f) or from the value as of the close of the previous business day.

OCC supported proposed § 39.19(c)(4)(ii) but suggested that, when calculating liquidity resources to determine whether reporting is required, the margin on deposit should not be included in the calculation. OCC asserted that excluding margin on deposit

[39] The Commission is also renumbering existing § 39.19(c)(4)(ii) and all subsequent paragraphs of § 39.19(c)(4).

from the calculation will align this requirement with the proposed changes to § 39.11. OCC also indicated that including margin on deposit in this calculation may skew the results of the calculation to create a less accurate measure of the resources a DCO has to manage a potential default. Alternatively, OCC suggested that, if margin on deposit is included in the calculation, the DCO should compare the liquidity resources of the clearing member group with the highest projected stress test losses to the liquidity resources of that same clearing member group as of the last quarterly report or the previous business day. The Commission confirms that, for purposes of calculating liquidity resources to determine whether reporting is required under § 39.19(c)(4)(ii), margin on deposit is not included in the calculation, consistent with the amendments to § 39.11.

10. Request to Clearing Member to Reduce Positions – § 39.19(c)(4)(vi)

The Commission is adopting the proposed changes to § 39.19(c)(4)(v), which is being renumbered as § 39.19(c)(4)(vi). This provision requires a DCO to notify the Commission immediately when the DCO requests that a clearing member reduce its positions. The Commission is deleting from this provision the language limiting notice to circumstances when "the [DCO] has determined that the clearing member has exceeded its exposure limit, has failed to meet an initial or variation margin call, or has failed to fulfill any other financial obligation to the [DCO]." This change is necessary because the Commission believes a DCO's request to a clearing member to reduce its positions is a sufficiently significant step that the Commission should be notified regardless of the reason for the request. The Commission did not receive any comments on the proposed changes to this provision.

11. Change in Key Personnel – § 39.19(c)(4)(x)

The Commission is adopting the proposed changes to § 39.19(c)(4)(ix), and is renumbering it as § 39.19(c)(4)(x). This provision requires a DCO to report to the Commission no later than two business days following the departure or addition of key personnel, as defined in § 39.2. The Commission is clarifying that the notification requirement applies to both temporary and permanent replacements, and must include contact information. The Commission notes that the required contact information includes the individual's name, title, office address, email address, and phone number. The Commission did not receive any comments on the proposed changes to this provision.

12. Change in Legal Name – § 39.19(c)(4)(xi)

The Commission is adopting new § 39.19(c)(4)(xi) to require a DCO to report a change to the legal name under which it operates. As the Commission noted in the Proposal, however, the DCO's registration order (and any other orders the DCO received from the Commission) would not need to be changed to reflect the legal name change. The Commission did not receive any comments on the proposed changes to this provision.

13. Change in Liquidity Funding Arrangement – § 39.19(c)(4)(xiii)

The Commission is adopting new § 39.19(c)(4)(xiii) to require a DCO to report a change in any liquidity funding arrangement it has in place. The Commission believes that receiving this information will assist it in overseeing the liquidity risk management of DCOs.

ICE opposed the new requirement on the grounds that reporting is unnecessary, provided that the DCO continues to satisfy the liquidity and other financial resource requirements, and provided that the liquidity funding changes are consistent with the policies and procedures of the DCO. CME and ICE suggested that the Commission incorporate a materiality threshold into the new requirement. Specifically, CME argued that, with respect to SIDCOs, the focus should be on capturing and reporting material changes to liquidity funding arrangements that allow for resources to be treated as qualifying liquidity resources.

In response to commenters' requests that a materiality threshold be incorporated into the reporting requirement, the Commission notes that the requirement includes a materiality element, along with a non-exclusive list of reportable events. Specifically, the rule requires reporting for "a change in provider, change in the size of the facility, change in expiration date, or any other material changes or conditions." In response to the comment that reporting changes in liquidity funding arrangements is unnecessary, the Commission believes that such reporting will not be burdensome because it does not expect reportable changes to be frequent. The Commission is adopting § 39.19(c)(4)(xiii) as proposed.

14. Change in Settlement Bank Arrangements – § 39.19(c)(4)(xiv)

The Commission is adopting new § 39.19(c)(4)(xiv) to require a DCO to report a new relationship with, or termination of a relationship with, any settlement bank used by the DCO or approved for use by the DCO's clearing members. The new rule differs from the proposal in that the reporting requirement only applies when a new settlement bank is added or an existing settlement bank relationship is terminated, rather than when the

DCO changes its arrangements with a settlement bank. Also, the rule requires reporting within three business days, as opposed to one business day, as previously proposed. Consistent with the observation of one commenter, the Commission believes that the three-day requirement is properly aligned with the requirement in § 1.20(g)(4) that DCOs file an acknowledgment letter within three business days after opening a futures customer funds account at a depository.

ICE opposed the proposed requirement. ICE argued that the purpose of the requirement is unclear, noting that DCOs can have relationships with multiple settlement banks and that those relationships can be changed for commercial, operational, or other reasons in the ordinary course of business. CME, ICE, and Eurex suggested that the Commission incorporate a materiality threshold into the requirement that a DCO report a change in its arrangements with any settlement bank. Specifically, CME and OCC suggested that a DCO only be required to report when it starts using a new settlement bank or ceases using an existing settlement bank. Eurex stated that incorporating a materiality threshold into this requirement would align it with the current reporting requirement related to changes in credit facility funding arrangements, and with the proposed reporting requirement related to changes in liquidity funding arrangements. ICE suggested that reporting be limited to defaults or significant failures by a settlement bank. CME and OCC asserted that the reporting requirement should be designed to avoid unnecessary reports of routine administrative or operational changes, and similar immaterial changes, at settlement banks. CME also suggested that DCOs be required to report changes in settlement bank arrangements within three business days, to make the

rule consistent with the requirement that DCOs file acknowledgment letters within three business days.

15. Settlement Bank Issues – § 39.19(c)(4)(xv)

The Commission is adopting new § 39.19(c)(4)(xv) to require a DCO to report to the Commission no later than one business day after learning of any material issues or concerns regarding the performance, stability, liquidity, or financial resources of any settlement bank used by the DCO or approved for use by the DCO's clearing members. ICE opposed the proposed requirement, suggesting that DCOs should not be required to report operational problems that are resolved in the ordinary course of business. OCC suggested that a DCO have "broad discretion" to determine whether a settlement bank issue is "material," and should therefore be reported. OCC argued that a DCO should not be required to report routine operational issues that do not affect the DCO's assessment of the performance, stability, liquidity, or financial resources of the settlement bank. The Commission agrees that a DCO should have broad discretion to determine whether a settlement bank issue is a "material" issue and should therefore be reported. The Commission further agrees that routine operational issues that are resolved in the ordinary course of business would not be "material."

16. Change in Depositories for Customer Funds – § 39.19(c)(4)(xvi)

The Commission has determined not to adopt proposed § 39.19(c)(4)(xvi) at this time.[40] The proposed rule would have required a DCO to report any change in its arrangements with any depositories at which the DCO holds customer funds. CME and

[40] All of the paragraphs of § 39.19(c)(4) that follow proposed § 39.19(c)(4)(xvi) are being renumbered to account for the fact that the Commission determined not to adopt paragraph (xvi).

ICE opposed this requirement. ICE argued that the purpose of this requirement is unclear, noting that DCOs can have a relationship with a number of depositories and that those relationships can be changed for commercial, operational, or other reasons in the ordinary course of business. CME, ICE, and Nodal argued that this requirement is duplicative of the requirements in § 1.20(g)(4), that a DCO obtain written acknowledgment letters from depositories and file those letters with the Commission. Eurex, ICE, and CME suggested that the Commission incorporate into this requirement a materiality threshold. Eurex stated that incorporating a materiality threshold would align it with the current reporting requirement related to changes in credit facility funding arrangements, and with the proposed reporting requirement related to changes in liquidity funding arrangements. ICE suggested that reporting should be limited to defaults or significant failures of the depository. The Commission's intention was not to introduce duplicative requirements, but rather, to aid the Commission in monitoring a DCO's compliance with section 4d of the CEA and related Commission regulations regarding the treatment of customer funds. However, the Commission recognizes that this reporting may be duplicative of the requirements in § 1.20(g)(4), and is therefore declining to adopt it at this time.

17. Change in Fiscal Year – § 39.19(c)(4)(xix)

The Commission is adopting new § 39.19(c)(4)(xix) to require a DCO to notify the Commission no later than two business days after any change to the start and end dates of its fiscal year. The new rule differs from the proposal in that notice is required within two business days, rather than immediately, as previously proposed. This change will better align the notice period with other requirements in § 39.19(c)(4). ICE agreed

that notice of a change in fiscal year is appropriate; however, ICE stated that it is unclear why such notice needs to be immediate, on par with notice of a default and similar events.

18. Change in Independent Accounting Firm – § 39.19(c)(4)(xx)

The Commission is adopting new § 39.19(c)(4)(xx) to require a DCO to report to the Commission no later than 15 days after any change in the DCO's independent public accounting firm. The Commission had proposed to require that the change be reported within one business day, but agrees with a comment from Nodal. Nodal opposed the requirement that the change be reported to the Commission within one business day, asserting that it places an undue burden on the DCO. Nodal instead suggested that the change be reported within 15 business days, arguing that 15 business days is more reasonable and consistent with requirements of other financial regulators, specifically, a regulation imposed by the Federal Deposit Insurance Corporation that requires insured depository institutions to report a change in independent accounting firm within 15 days.[41]

19. Major Decision of the Board of Directors – § 39.19(c)(4)(xxi)

The Commission is adopting new § 39.19(c)(4)(xxi) to codify in § 39.19 the requirement (currently in § 39.32(a)(3)(i) and adopted in this rulemaking in § 39.24(a)(3)(i), as discussed further below) that a DCO report to the Commission any major decision of the DCO's board of directors. ICE opposed the proposed requirement, asserting that board decisions are not necessarily categorized as major or minor. ICE also noted that board decisions are routinely disclosed to clearing members and other

[41] 12 CFR 363.4(d).

interested parties pursuant to § 39.32(a)(3), and are disclosed to the Commission through a variety of processes, including §§ 40.5 and 40.6. ICE requested that the Commission clarify specific categories of events that must be reported. ICE also requested that DCOs not be required to report decisions before they are implemented or announced publicly. Nadex requested clarification as to what constitutes a "major decision," whether the DCO has discretion to determine which decisions qualify as major, and regarding the scope of such discretion. Nadex further requested clarification as to whether the DCO must provide an updated notice if the original board decision is amended or withdrawn before being implemented. Lastly, Nadex requested confirmation that the notice will be confidential, the DCO will not be required to post the notice on its website, and that the notice will not be posted on the Commission's website.

In response to these comments, the Commission notes that existing § 39.32(a)(3)(i) (moved in this rulemaking to § 39.24(a)(3)(i)) already requires that SIDCOs and subpart C DCOs disclose "major decisions of the board of directors" to the Commission, and to clearing members and other relevant stakeholders. The Commission proposed § 39.19(c)(4)(xxii) (renumbered as paragraph (xxi) in the final) simply to include this existing obligation in § 39.19 so that all of a DCO's reporting obligations are set forth in one place. The Commission further reiterates that DCOs have reasonable discretion to determine whether a board decision is major, though DCOs should develop and implement procedures to determine if a board decision is major and therefore reportable. A DCO would have to provide an updated notice if the original board decision is amended or withdrawn before being implemented, otherwise the Commission will be misinformed in relying on the original notice. Lastly, the Commission confirms

that the notice will be considered confidential, as are all submissions received pursuant to § 39.19, and will not be posted on the Commission's website, nor required to be posted on the DCO's website.

20. Margin Model Issues – § 39.19(c)(4)(xxiii)

The Commission is adopting new § 39.19(c)(4)(xxiii) to require a DCO to report to the Commission no later than one business day after any issue occurs with a DCO's margin model, including margin models for cross-margined portfolios, that materially affects the DCO's ability to calculate or collect initial margin or variation margin. The final rule differs from the proposal in that the required reporting is limited to those margin model issues that "materially" affect the DCO's ability to calculate or collect initial margin or variation margin.

OCC, FIA, and ISDA supported the proposed requirement. OCC requested clarification regarding the contents of the report, specifically whether a DCO may comply with the requirement by supplying the Commission with a copy of the margin model issue report that DCOs also registered with the SEC must submit to the SEC pursuant to Regulation Systems Compliance and Integrity.[42] FIA and ISDA suggested that DCOs also be required to notify clearing members of margin model issues, and to notify the Commission and clearing members when the DCO makes materially inaccurate margin calls, if the DCO incorrectly debits a clearing member's account, for example.

Nodal and ICE opposed the proposed requirement. Nodal argued that the proposed requirement is prescriptive, overbroad, and vague, especially to the extent that it requires reporting any issue, irrespective of its materiality, when no actual positions are

[42] 17 CFR 242.1000 *et seq.*

affected by the issue. ICE argued that margin models face exceedances and other circumstances that are addressed through established processes, and that significant margin model problems are subject to existing reporting requirements.

Several commenters suggested that the proposed regulation include a materiality threshold. Nodal suggested that DCOs only be required to report margin model issues that materially affect the DCO's ability to calculate or collect variation or initial margin, and an actual position is affected. CME and LCH made the same suggestion, although CME suggested that an actual position must be materially impaired to trigger the reporting requirement. LCH commented that limiting reporting to material issues would minimize the reporting of immaterial or non-significant information and thereby ensure that the Commission focuses on those margin model issues that merit its attention. ICE suggested that reporting should be limited to margin model issues that are material to the operation of the DCO. LCH also noted that DCOs can detect and resolve margin model issues during daily back testing.

The Commission agrees with commenters that reporting should be limited to those margin model issues that "materially" affect the DCO's ability to calculate or collect initial margin or variation margin. The Commission believes that reporting only margin model issues that materially affect the DCO's ability to calculate or collect initial margin or variation margin, as opposed to all margin model issues, strikes an appropriate balance between supplying the Commission with information needed for effective oversight of DCOs, without placing an undue burden on the DCOs. The Commission confirms that a DCO may supply the Commission with a copy of the margin model issue report that it submits to the SEC pursuant to Regulation Systems Compliance and

Integrity, but the DCO must supplement that report by providing the Commission with an explanation of the cause of the issue with the margin model.

21. Recovery and Wind-Down Plans – § 39.19(c)(4)(xxiv)

The Commission is adopting new § 39.19(c)(4)(xxiv) to require a DCO that is required to maintain recovery and wind-down plans pursuant to § 39.39(b) to submit its plans to the Commission no later than the date on which it is required to have the plans. The new rule also permits a DCO that is not required to maintain recovery and wind-down plans pursuant to § 39.39(b), but which nonetheless maintains such plans, to submit the plans to the Commission. If a DCO subsequently revises its plans, the DCO will be required to submit the revised plans to the Commission along with a description of the changes and the reason for those changes. The Commission included this requirement because § 39.39(b) requires SIDCOs and subpart C DCOs to maintain recovery and wind-down plans, but there is currently no explicit requirement that the DCOs submit the plans to the Commission.

FIA and ISDA suggested that the Commission replace the requirement that a DCO submit its recovery and wind-down plans no later than the date on which it is required to have the plans with the actual date that a DCO is required to have plans, because it is otherwise difficult to discern exactly when a DCO must submit its plans. CME suggested that DCOs be required to submit their recovery and wind-down plans to the Commission annually, but that DCOs only be required to submit revised or updated plans if the changes are material.

In response to FIA and ISDA's comment, the Commission notes that the actual date by which a SIDCO or (new) subpart C DCO would be required to maintain a

recovery and wind-down plan depends upon (a) when it is designated or elects subpart C status, (b) whether it requests relief pursuant to § 39.39(f), and (c) whether, and to what extent, the Commission were to grant such relief. That date cannot be ascertained in advance of a designation/election, potential request, and/or decision on such a request. In response to CME's suggestion that DCOs only be required to submit updated or revised plans when the changes are material, the Commission believes that, given the importance of recovery and wind-down plans to planning for and, in the unlikely event, addressing the bankruptcy of, or executing the resolution of, a DCO, it is important that the Commission have on hand, on an ongoing basis, an accurate and current version of the DCO's recovery and wind-down plans. The date of such a bankruptcy or resolution (and the corresponding urgent need for current information) cannot be determined in advance. For these reasons, the Commission is adopting § 39.19(c)(4)(xxv) as proposed (renumbered as § 39.19(c)(4)(xxiv)).

22. New Product Accepted for Clearing – § 39.19(c)(4)(xxvi)

The Commission has determined not to adopt proposed new § 39.19(c)(4)(xxvi), which would have required a DCO to provide notice to the Commission no later than 30 calendar days prior to accepting a new product for clearing.

FIA and ISDA supported the proposed notice requirement for new products accepted for clearing, but MGEX, Nodal, CBOE, OCC, ICE, and CME opposed it. The commenters opposed to the proposed notice requirement offered several interrelated and overlapping reasons for their opposition, but the thrust of their arguments was that the proposed requirement is unnecessary and would be burdensome and inefficient because it needlessly duplicates and is inconsistent with the existing, well-functioning self-

certification regime in § 40.2 for listing a new product for trading on a DCM or SEF. In addition, CME argued that the proposed 30-day notice requirement is inconsistent with section 5c(c) of the CEA. Lastly, commenters raised a number of concerns regarding how the term "new product" might be defined. Due to the many thoughtful and detailed comments addressing this provision, the Commission wishes to give further consideration to this issue and may address it in a separate rulemaking.

23. Requested Reporting – § 39.19(c)(5)

The Commission is adopting the proposed changes to § 39.19(c)(5), which requires a DCO to provide to the Commission specific types of information upon request. The Commission is amending paragraphs (i) through (iii) of § 39.19(c)(5) to delete the phrase "in the format and manner specified, and within the time provided, by the Commission in the request" and to add introductory language to subparagraph (c)(5) that requires a DCO to provide the requested information "within the time specified in the request." Regulation 39.19(b) already requires a DCO to provide the information in the format and manner specified by the Commission, so it is unnecessary to repeat that requirement in § 39.19(c)(5). The Commission is also removing § 39.19(c)(5)(iii), which required a DCO to report to the Commission upon request end of day gross positions by each beneficial owner. To the extent that the Commission needs end-of-day gross position information by beneficial owner, the Commission retains the authority to request that information pursuant to § 39.19(c)(5)(i). The Commission did not receive any comments on the proposed changes to § 39.19(c)(5).

J. Public Information – § 39.21

1. Public Disclosure and Publication of Information – § 39.21(c) and (d)

The Commission is adopting changes to § 39.21(c) and removing § 39.21(d) in order to clarify the information that a DCO must publicly disclose on its website and to assist the public in locating the information. Regulation 39.21(c) requires a DCO to disclose publicly and to the Commission information concerning: (1) the terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO; (2) each clearing and other fee that the DCO charges its clearing members; (3) the margin-setting methodology; (4) the size and composition of the financial resource package available in the event of a clearing member default; (5) daily settlement prices, volume, and open interest for each contract, agreement, or transaction cleared or settled by the DCO; (6) the DCO's rules and procedures for defaults in accordance with § 39.16; and (7) any other matter that is relevant to participation in the clearing and settlement activities of the DCO. Regulation 39.21(d) requires the DCO to post all of this information, as well as the DCO's rulebook and a list of its current clearing members, on the DCO's website, unless otherwise permitted by the Commission.

The Commission is removing § 39.21(d) and incorporating its requirements into § 39.21(c). The Commission reiterates that, as it clarified in the Proposal, a DCO must make each of the items of information listed in § 39.21(c) available separately on the DCO's website and not just in the DCO's rulebook, to assist members of the public in locating the relevant information, and potentially facilitate greater uniformity across DCO websites.

FIA and ISDA supported the proposed requirement that a DCO make certain information available on its website as opposed to in its rulebook. Nadex noted that it does not object to moving the requirements of § 39.21(d) into § 39.21(c), but requested

confirmation that the exemptive relief granted in CFTC Letter No. 14-04,[43] which exempted Nadex from § 39.21(d) with respect to making the names of its clearing members that are retail customers publicly available on its website, will continue to apply. The Commission notes the inclusion in § 39.21(c) of the phrase "unless otherwise permitted by the Commission" acknowledges that a DCO may seek or have relief from these requirements.

2. Financial Resources – § 39.21(c)(4)

Regulation 39.21(c)(4) requires a DCO to disclose publicly the size and composition of its financial resource package available in the event of a clearing member default. The Commission is amending § 39.21(c)(4) by adding the words "updated as of the end of the most recent fiscal quarter or upon Commission request and posted as promptly as practicable after submission of the report to the Commission under § 39.11(f)(1)(i)(A)." This change makes the frequency of public disclosure of a DCO's financial resources in the event of a clearing member default consistent with § 39.11(f)(1)(i)(A), which requires a DCO to report this information to the Commission each fiscal quarter or at any time upon Commission request. The Commission believes it is reasonable to require a DCO to update this information publicly with the same frequency. The final rule differs from the proposal, which would have required that the update be posted "concurrently" with the submission of the report.

ICE suggested changing the term "concurrently" in proposed § 39.21(c)(4) to "as promptly as practicable," because for DCOs that are subsidiaries of public companies, it may not be feasible to make such a public disclosure until relevant financial statements

[43] CFTC Letter No. 14-04 (Jan. 16, 2014).

for the public parent have been disclosed in accordance with all securities law requirements. MGEX agreed that updating the financial resource information on a quarterly basis seems reasonable, but noted that all subpart C DCOs are already making this data available each quarter in accordance with the CPMI-IOSCO Public Quantitative Disclosure Standards for Central Counterparties[44] (Quantitative Disclosure), as required under proposed § 39.37(c) (which the Commission is adopting herein), and recommended that the Commission explicitly acknowledge that a DCO's publication of its Quantitative Disclosure fulfills the requirement of § 39.21(c)(4). In commenting on the proposed changes to § 39.37, SIFMA AMG noted that the Quantitative Disclosures are difficult to locate on DCOs' websites.

The Commission is accepting ICE's suggestion to replace "concurrently" in proposed § 39.21(c)(4) with "as promptly as practicable," to permit DCOs flexibility in situations in which posting updated information concurrently would not be possible. In response to MGEX's recommendation, the Commission notes that a DCO's publication of its Quantitative Disclosure would not fulfill the requirements of § 39.21(c)(4), for the same reasons that it stated in the Proposal that each of the disclosures required under § 39.21(c)(4) must be presented separately on the DCO's website.

3. Daily Settlement Prices, Volume, and Open Interest – § 39.21(c)(5)

Regulation 39.21(c)(5) requires a DCO to disclose publicly daily settlement prices, volume, and open interest for each contract, agreement, or transaction cleared or settled by the DCO. The Commission is amending § 39.21(c)(5) to clarify that DCOs are

[44] *See* CPMI-IOSCO, Public Quantitative Disclosure Standards for Central Counterparties (Feb. 2015), available at *https://www.bis.org/cpmi/publ/d125.pdf*.

expected to publicly disclose volume and open interest, as well as settlement prices, on a daily basis in order to comply with § 39.21(c)(5). Although § 39.21(c)(5) does not specify a period of time the information must remain on the website as noted in the Proposal, the Commission encourages DCOs to make several days' worth of information available on their websites, as certain DCOs already do.

4. Swaps Required to be Cleared – § 39.21(c)(8)

The Commission is adopting new § 39.21(c)(8) to include in the list of required public disclosures the information that DCOs make publicly available under § 50.3(a). Regulation 50.3(a) requires that a DCO make publicly available on its website a list of all swaps that it will accept for clearing and identify which swaps on the list are required to be cleared under section 2(h)(1) of the CEA and part 50 of the Commission's regulations. The Commission is adopting § 39.21(c)(8) to add a cross-reference to § 50.3(a). The Commission did not receive any comments on this proposal.

K. Governance Fitness Standards, Conflicts of Interest, and Composition of Governing Boards – §§ 39.24, 39.25, and 39.26

The Commission is removing § 39.32 in subpart C of part 39, which set forth the requirements for governance arrangements for SIDCOs and subpart C DCOs, and adopting new §§ 39.24, 39.25, and 39.26 in subpart B consistent with Core Principles O, P, and Q, thereby making these requirements applicable to all DCOs. Core Principle O requires a DCO to establish governance arrangements that are transparent to fulfill public interest requirements and to permit the consideration of the views of owners and participants. Core Principle O also requires a DCO to establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the

DCO, any other individual or entity with direct access to the settlement or clearing activities of the DCO, and any other party affiliated with any of the foregoing individuals or entities. Core Principle P requires a DCO to establish and enforce rules to minimize conflicts of interest in the decision-making process of the DCO and establish a process for resolving such conflicts of interest. Core Principle Q requires a DCO to ensure that the composition of its governing board or committee includes "market participants."

Consistent with Core Principle Q, new § 39.26 requires that a DCO include market participants and individuals who are not executives, officers, or employees of the DCO or an affiliate thereof on the DCO's governing board or board-level committee. The Commission interprets "governing board or board-level committee" to mean the group with the ultimate decision-making authority. The Commission had proposed to define "market participant" for purposes of § 39.26 as "any clearing member of the [DCO] or customer of a clearing member, or an employee, officer, or director of such entity." However, given comments received, as discussed below, the Commission is declining to adopt this definition at this time.

CME, SIFMA AMG, and Mr. Barnard agreed with the Commission's proposal to codify the governance arrangements applicable to SIDCOs and subpart C DCOs within proposed §§ 39.24 through 39.26, and to make them applicable to all DCOs. Mr. Barnard believed the standards are clearly appropriate for all DCOs and will enhance risk management and governance, thus further improving the protection for market participants and the public.

CME agreed with the definition of market participant as set forth in proposed § 39.26. CME stated that it has benefited from having a board of directors, oversight

committee, and risk committees consisting of a variety of market participants with differing views and expertise. CME also appreciated that the Commission proposed a principles-based approach by allowing each DCO to determine the best representation of market participants for its governing board or committee for its risk management governance purposes, while also allowing each DCO to continue to comply with relevant state and securities laws.

SIFMA AMG and MFA supported the adoption of a definition of "market participant" to require that the composition of a DCO's governing board or committee include "market participants." SIFMA AMG and MFA, however, both shared concerns that the definition of "market participant" as proposed in § 39.26 was a broad term that extends beyond customers and could permit DCOs to choose only persons associated with clearing members and/or DCO employees, officers, or directors to serve on the DCO's board of directors. SIFMA AMG and MFA requested that the Commission amend § 39.26 to explicitly require customer participation on DCOs' governing bodies, such as the board of directors and advisory committees. SIFMA AMG suggested that, had Congress intended for only clearing members to be on DCO governing boards, Congress would have stated so specifically. However, Congress chose to use the term "market participants," which SIFMA AMG suggested that the Commission correctly defined as including clearing members and customers.

Mr. Saguato agreed with the benefits of multi-stakeholder representation at the board level of a DCO and a more direct engagement of market participants in the governance and supervision of a DCO. He further suggested that the Commission consider requiring at least half of the representatives of a DCO's risk committee be

comprised of market participants, in particular clearing members, to transform risk committees from "mere advisory committees" to a committee with decision-making power. Mr. Saguato also suggested that the Commission consider requiring a DCO's board of directors to provide formal and comprehensive explanations to market participants and the Commission any time that the DCO dissents from the deliberations of the risk committee.

Nodal agreed that a DCO needs to be responsive to its clearing members and its customers. However, Nodal suggested that the Commission further interpret "governing board or committee" within proposed § 39.26 to include the board of the DCO's parent company to the extent it has relevant decision-making authority over the DCO.

ICE agreed that there might be benefits in some cases to having market participants on a DCO's board or governing body. However, ICE opposed requiring a DCO to include market participants on its board of directors or other governing body. ICE suggested that the Commission's approach is overly prescriptive and that the CEA, including Core Principle Q, does not mandate any particular form of market participation. ICE suggested that the Commission interpret "governing board or committee" to allow market participation through risk or other committees rather than the governing board itself. ICE suggested that it is not uniformly necessary for clearing members or their customers to participate on the board of directors or other governing body of a DCO. Further, ICE suggested that requiring the same approach for every DCO, regardless of differences in organizational structure, membership, cleared products mix, business considerations, jurisdiction of organization, and other relevant factors, is unnecessarily rigid and could lead to risks and conflicts that the Commission has not considered. For

example, ICE argued that, depending on the corporate structure of a DCO, participation on the board of directors or governing body might bring fiduciary and other duties in favor of the DCO, which might expose a participant to legal liability and pose conflicts of interest with the participant's other activities. ICE believes that, while exculpatory provisions, indemnifications, and other rules might mitigate or cover some of these risks, it might not be possible to do so completely or in all cases.

In addition, ICE disagreed with the Commission's suggestion to allow non-voting representation by market participants on the governing board, as ICE did not agree that such representation is a viable or desirable approach in all cases. ICE suggested that market participants might prefer representation on a risk or similar committee to non-voting representation on a DCO's governing board. ICE also suggested that non-voting representation might raise other issues of corporate governance, confidentiality, and duties to the DCO that a DCO would need to assess in light of its particular circumstances.

Nadex suggested that fully collateralized, non-intermediated DCOs be exempt from compliance with proposed §§ 39.24 and 39.26 as retail individuals, like those of Nadex's market participants, are not industry professionals, are not familiar with the DCO's internal operations in the same way that FCMs and other sophisticated members are familiar with "traditional" DCOs' business and operations, do not have an ownership interest or financial stake in the DCO or its default waterfall, and therefore are not as substantially involved in the DCO's governance. Nadex further suggested that solicitation of the views of Nadex's market participants as to the governance of the DCO

would not likely provide significant value as compared with the burden and cost of reviewing such responses and could hinder the efficient operation of Nadex's board.

In response to the comments on § 39.26, the Commission notes that the requirement to include market participants on a DCO's governing board or committee is a statutory requirement under Core Principle Q, applicable to all DCOs regardless of whether it is restated in the Commission's regulations. In response to ICE's suggestion that the Commission interpret "governing board or committee" to allow market participation through risk or other committees rather than the governing board itself, the Commission believes that this interpretation could permit a DCO to create a lower-level committee that does not have the same decision-making authority as its board or board-level committee, thereby preventing market participation on the DCO's governing board or committee, which is contrary to the statutory requirement of Core Principle Q. Further, the Commission agrees with CME's comment that § 39.26 takes a principles-based approach that allows each DCO to determine the best representation of market participants on its governing board or committee for its risk management governance purposes, while also allowing each DCO to continue to comply with relevant state and securities laws. In response to Nodal's request that the Commission further interpret "governing board or committee" to include the board of the DCO's parent company to the extent that it has relevant decision-making authority over the DCO, the Commission agrees that market participant representation on the board of the DCO's parent company may be appropriate where the DCO does not have its own board and the board of the DCO's parent company serves as the ultimate decision-making authority for the DCO.

While the Commission expects that a DCO clearing for the customers of FCMs would generally have customer representation on the DCO's board or board-level committee, the Commission is not revising § 39.26 to explicitly require that a DCO include a customer on its board or board-level committee as requested by SIFMA AMG and MFA. The Commission reiterates that § 39.26 is designed to enhance risk management and controls by promoting transparency of a DCO's governance arrangements by taking into account the interests of a DCO's clearing members and, where relevant, the clearing members' customers.[45] The Commission further reiterates that customers clearing trades through an FCM in a particular market are exposed to the risks of the market, just as clearing members are, and therefore have similar interests in the decisions that govern the operation of the DCO.[46]

The Commission is, however, sympathetic to Nadex's concerns that the burden and cost of including market participants that are primarily retail and not exposed to the risk of lost margin or the default of the DCO's other customers may not be warranted for fully collateralized, non-intermediated DCOs. In light of this and other comments in this regard, the Commission wishes to give further consideration as to how to define "market participant" and declines to define it at this time.

The Commission notes that Mr. Saguato's suggestion that the Commission should require that at least half of the representatives of a DCO's risk committee be comprised of market participants is beyond the scope of the proposal, as it prescribes the composition of a DCO's risk committee rather than that of its governing body. Mr.

[45] Derivatives Clearing Organization General Provisions and Core Principles, 84 FR 22244.

[46] *Id*.

Saguato's suggestion that the Commission require a DCO's board to provide formal and comprehensive explanations to market participants and the Commission any time that the DCO dissents from the deliberations of the risk committee is also beyond the scope of the proposal.

L. Legal Risk – § 39.27

Regulation 39.27(c) requires a DCO that provides clearing services outside the United States to identify and address conflict of law issues, specify a choice of law, be able to demonstrate the enforceability of its choice of law in relevant jurisdictions, and be able to demonstrate that its rules, procedures, and contracts are enforceable in all relevant jurisdictions. In addition, Form DCO requires each applicant for DCO registration that provides or will provide clearing services outside the United States to provide a memorandum to the Commission that would, among other things, analyze the insolvency issues in the jurisdiction where the applicant is based.

The Commission is amending § 39.27(c) by adding paragraph (3), which requires a DCO that provides clearing services outside the United States to ensure on an ongoing basis that the memorandum required in Exhibit R of Form DCO is accurate and up to date, and to submit an updated memorandum to the Commission promptly following all material changes to the analysis or content contained in the memorandum.

ICE suggested that, instead of on an ongoing basis, the memorandum be reviewed and updated at regular intervals, such as every three years, or within a defined timeframe after a material change to the law. The Commission is declining ICE's suggestion because the purpose of the requirement is to ensure the DCO's ongoing monitoring of applicable legal requirements and prompt notification to the Commission if material

changes occur. In response to ICE's comment, the Commission confirms that, while changes to the memorandum and filing of updates are expected to occur infrequently, the DCO has a continuing obligation to ensure that the information in the memorandum is current.

V. Amendments to Part 39 – Subpart C – Provisions Applicable to SIDCOs and DCOs that Elect to be Subject to the Provisions

A. Financial Resources for SIDCOs and Subpart C DCOs – § 39.33

Regulation 39.33(a)(1) requires a SIDCO or a subpart C DCO that is systemically important in multiple jurisdictions, or that is involved in activities with a more complex risk profile, to maintain financial resources sufficient to enable it to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined loss in extreme but plausible market conditions. The Commission is amending § 39.33(a)(1) by replacing the phrase "largest combined loss" with "largest combined financial exposure" in order to achieve consistency with the relevant provisions of Commission regulations and the CEA—specifically, § 39.11(a)(1) and section 5b(c)(2)(B) of the CEA regarding DCO financial resources requirements.

Regulation 39.33(c)(1) requires a SIDCO or subpart C DCO to maintain eligible liquid resources sufficient to meet its obligations to perform settlements with a high degree of confidence under a wide range of stress scenarios that should include the default of the clearing member creating the largest aggregate liquidity obligation for the SIDCO or subpart C DCO. The Commission is amending § 39.33(c)(1) by adding the phrase "in all relevant currencies" to clarify that the "largest aggregate liquidity obligation" means the total amount of cash, in each relevant currency, that the defaulted

clearing member would be required to pay to the DCO during the time it would take to liquidate or auction the defaulted clearing member's positions, as reasonably modeled by the DCO. When evaluating its largest aggregate liquidity obligation on a day-to-day basis over a multi-day period, a SIDCO or subpart C DCO may use its liquidity risk management model.

Regulation 39.33(d) requires a SIDCO or a subpart C DCO to undertake due diligence to confirm that each of its liquidity providers has the capacity to perform its commitments to provide liquidity, and to regularly test its own procedures for accessing its liquidity resources. The Commission is amending the regulation to additionally require a SIDCO with access to deposit accounts and related services at a Federal Reserve Bank to use such services "where practical."[47]

MGEX agreed that proposed § 39.33(d)(5) would further enhance a SIDCO's financial integrity and management of liquidity risk. MGEX further urged the Commission to advocate for other DCOs' ability to have accounts at a Federal Reserve Bank, as allowing broader access would not only lower the credit and liquidity risks faced by DCOs under the Commission's jurisdiction, it would also advance the Commission's goal of enhancing the protection of customer funds and help mitigate the disparity or competitive disadvantage that otherwise results based on a DCO's size or systemic importance. SIFMA AMG also supported proposed § 39.33(d)(5) and recommended that the Commission expand the requirements to all DCOs.

[47] Under section 806(a) of the Dodd-Frank Act, 12 U.S.C. 5465(a), the Board of Governors of the Federal Reserve System may authorize a Federal Reserve Bank to establish and maintain an account for a financial market utility (FMU), which includes a SIDCO. A SIDCO with access to accounts and services at a Federal Reserve Bank is required to comply with related rules published by the Board of Governors of the Federal Reserve System. *See generally* Financial Market Utilities, 78 FR 76973 (Dec. 20, 2013) (final rules adopted by the Board of Governors to govern accounts held by designated FMUs).

CME recommended that the Commission revise proposed § 39.33(d)(5) to clarify that a decision on whether the use of a Federal Reserve Bank's accounts and services is "practical" should take into account a SIDCO's ability to effectively manage its overall risk. Specifically, CME urged that a SIDCO should have the flexibility to strike the appropriate balance between using commercial banks (in their capacities as custodians and cash depositories) and a Federal Reserve Bank in order to allow a SIDCO to diversify its counterparty relationships to holistically manage its liquidity and operational risks. CME was of the view that, in the event of a clearing member default, commercial banks may more efficiently monetize non-cash collateral and can move collateral internally without the restraints of the Federal Reserve Banks' operating timelines.

As to MGEX's suggestion that the Commission advocate for all DCOs to have the ability to hold accounts at a Federal Reserve Bank, the Commission reiterates its view that section 806(a) of the Dodd-Frank Act supports Federal Reserve Banks acting as depositories for all registered DCOs, not just SIDCOs.[48] As to CME's suggestion that the Commission clarify when the use of a Federal Reserve Bank's accounts and services is "practical," the Commission believes that this standard is consistent with Key Consideration 8 of PFMI Principle 7 (Liquidity Risk), which provides that "[a financial market utility] with access to central bank accounts, payment services, or securities services should use these services, *where practical*, to enhance its management of liquidity risk."[49] However, the Commission agrees that a SIDCO's decision on whether

[48] *See* CFTC Order Exempting the Federal Reserve Banks from Sections 4d and 22 of the Commodity Exchange Act, 81 FR 53467, 53470 - 53471 (Aug. 12, 2016).

[49] *See* CPMI-IOSCO, Principles for Financial Market Infrastructures, at Principle 7: Liquidity Risk, Key Consideration 8 (April 2012), available at *https://www.bis.org/cpmi/publ/d101a.pdf*.

the use of a Federal Reserve Bank's accounts and services is "practical" should take into account the SIDCO's ability to effectively manage its overall risk.

B. Risk Management for SIDCOs and Subpart C DCOs – § 39.36

Regulation 39.36 requires a SIDCO or a subpart C DCO to conduct stress tests of its financial and liquidity resources and to regularly conduct sensitivity analyses of its margin models. The Commission is amending § 39.36(a)(6) to clarify that a SIDCO or subpart C DCO that is subject to the minimum financial resources requirement set forth in § 39.11(a)(1), rather than § 39.33(a), should use the results of its stress tests to support compliance with that requirement.

The Commission is also amending § 39.36(b)(2)(ii) to replace the words "produce accurate results" with "react appropriately" to more accurately reflect that the purpose of a sensitivity analysis is to assess whether the margin model will react appropriately to changes of inputs, parameters, and assumptions. Furthermore, the Commission is amending § 39.36(d), which requires each SIDCO and subpart C DCO to "regularly" conduct an assessment of the theoretical and empirical properties of its margin model for all products it clears, to clarify that the assessment should be conducted "on at least an annual basis (or more frequently if there are material relevant market developments)." Lastly, the Commission is amending § 39.36(e) by adding the heading "[i]ndependent validation" to the provision. The Commission did not receive comments on these changes.

C. Additional Disclosure for SIDCOs and Subpart C DCOs – § 39.37

Regulation 39.37(a) and (b) requires a SIDCO or a subpart C DCO to publicly disclose its responses to the CPMI-IOSCO Disclosure Framework (Disclosure

Framework)[50] and, in order to ensure the continued accuracy and usefulness of its responses, to review and update them at least every two years and following material changes to the SIDCO's or subpart C DCO's system or environment in which it operates. The Commission is amending § 39.37(b) to additionally require that a SIDCO or a subpart C DCO provide notice to the Commission of any such updates to its responses following material changes to its system or environment no later than ten business days after the updates are made. Further, such notice will have to be accompanied by a copy of the text of the responses, specifying the changes that were made to the latest version of the responses.

Regulation 39.37(c) requires a SIDCO or a subpart C DCO to disclose, to the public and to the Commission, relevant basic data on transaction volume and values. The Commission is amending § 39.37(c) to explicitly state that a SIDCO or a subpart C DCO must disclose relevant basic data on transaction volume and values that are consistent with the standards set forth in the CPMI-IOSCO Public Quantitative Disclosure Standards for Central Counterparties.

SIFMA AMG supported the proposed requirement in § 39.37(b)(2) to require a SIDCO or a subpart C DCO to show all deletions and additions made to the immediately preceding version of the Disclosure Framework, as SIFMA AMG believes it is extremely useful in understanding the evolution of a SIDCO's or a subpart C DCO's Disclosure Framework. SIFMA AMG recommended, however, that § 39.37(b)(2) require a SIDCO or a subpart C DCO to provide the Commission with notice of *any* changes, not only

[50] *See* CPMI-IOSCO, Principles for Financial Market Infrastructures: Disclosure Framework and Assessment Methodology (Dec. 2012), available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD396.pdf*.

material ones, and require a SIDCO or a subpart C DCO to concurrently post a redline of any changes on its website when notifying the Commission. The Commission notes that the materiality limitation in § 39.37(b)(2) reflects the requirements of § 39.37(b)(1), which the Commission did not propose to change. SIFMA AMG further suggested that the Commission require a consistent format for SIDCOs' and subpart C DCOs' Disclosure Framework, provide a deadline for publishing such disclosures (*i.e.*, 30 days after quarter end), and audit such disclosures for material omissions.

As to SIFMA AMG's suggestion that the Commission require a consistent format for SIDCOs' and subpart C DCOs' Disclosure Framework and provide a deadline for publishing such disclosures, the Commission believes it would be more appropriate for these changes to be made by CPMI-IOSCO, and not the Commission, so that these changes would be applicable to all central counterparties.

VI. Amendments to Appendix A to Part 39 – Form DCO

To request registration as a DCO, § 39.3(a)(2) requires an applicant to file a complete Form DCO, which includes a cover sheet, all applicable exhibits, and any supplemental materials, as provided in appendix A to part 39.

The Commission proposed to amend Form DCO to better describe the required exhibits in a manner that is consistent with the amendments to the relevant regulations as described herein; the modifications to Form DCO do not make any other substantive changes. The Commission did not receive any comments on the proposed changes to Form DCO, and the Commission is adopting it as proposed.

VII. Amendments to Appendix B to Part 39 – Subpart C Election Form

The Commission proposed to amend the Subpart C Election Form to better reflect the requirements in subpart C of part 39 and to more closely align the format of the Subpart C Election Form with Form DCO by specifying the information and/or documentation that must be provided by a DCO as part of its petition for subpart C election. The Commission did not receive any comments on the proposed changes to the Subpart C Election Form, and the Commission is adopting it as proposed.

VIII. Amendments to Part 140 – Organization, Functions, and Procedures of the Commission

Regulation 140.94 includes delegation of authority from the Commission to the Director of the Division of Clearing and Risk. The Commission proposed to revise § 140.94 to conform to the changes to part 39 contained in the Proposal, without making any substantive change to the scope of delegation. The Commission did not receive any comments on these changes and is adopting them as proposed.

IX. Additional Comments

In addition to the comments discussed above, the Commission received several general comments that addressed matters outside the scope of the Proposal. The Commission appreciates the additional feedback. Because these comments do not address proposed changes and are therefore outside the scope of this rulemaking, the Commission may take the comments under advisement for future rulemakings.

FIA and ISDA stated that the financial resources requirement that the Commission imposes on DCOs under § 39.11 should ensure that a DCO's own capital contribution is set at an appropriate level to align the interests of the DCO with those of

its clearing members. They argued that the DCO should be required to contribute an amount to the default waterfall that is material to, and commensurate with the amount of risk cleared by, the DCO. They also argued that having sufficient "skin in the game" relative to the aggregate default fund would incentivize the DCO and its shareholders to engage in prudent risk management prior to and during a stress event because they would share in any resulting losses. They further argued that setting a DCO's minimum financial resources based, in part, upon a DCO's capital contribution would help to ensure the DCO's resiliency in variable market conditions. SIFMA AMG agreed, stating that a DCO's "skin in the game" is currently "generally very low" compared to the risk the DCO is responsible for managing but should be "meaningful" to appropriately incentivize the DCO's management and shareholders to manage the risks brought into clearing. SIFMA AMG recommended that the Commission lead an analytical study on "the optimal level of [DCO] capital and its specific allocation to [skin in the game] and provide a robust capital framework and requirement for [skin in the game] to the industry to further strengthen DCO resilience." Similarly, Mr. Saguato encouraged the Commission to look into the ratios between clearinghouses' own capital and members' guaranty fund deposits in the default waterfall and to analyze the effects they have on clearinghouses' risk profiles.

SIFMA AMG stated that DCOs should not be permitted to count unfunded assessments towards resources available to the DCO pursuant to § 39.11(b)(1)(v), which is being renumbered as § 39.11(b)(1)(iv).

SIFMA AMG suggested that the Commission require DCOs to make their quarterly and annual reports required under § 39.11(f) publicly available concurrent with

their submission to the Commission. In addition, SIFMA AMG recommended that full financial statements be prepared for each DCO at the DCO legal entity level and, where DCOs have structured themselves with mechanisms to limit recovery to a defined pool of assets, such DCOs should publicly disclose specific information regarding the total available recourse assets, including, but not limited to, the manner in which the assets are maintained and whether the DCO's capital is funded or unfunded and the manner by which it is segregated. The Commission encourages DCOs to make their financial reports available to the public.

MFA expressed support for the fair and open access provisions of § 39.12, in particular with respect to increasing customers' access to DCOs through direct membership. MFA noted that currently, customers exclusively access central clearing and DCOs indirectly through clearing members, rather than becoming direct DCO members, for a variety of financial and operational reasons. However, MFA pointed out that such indirect clearing relationships expose customers to counterparty credit risk arising from their clearing member, custodian, and DCO, and also may expose customers to fellow customer risk arising from the pro rata sharing of losses resulting from the default of a clearing member's other customers. To mitigate those risks, some customers would like to become direct DCO clearing members; however, MFA noted that barriers in DCO membership requirements have limited customers' ability to do so.

ICE recommended that the Commission clarify in § 39.13(g)(1), which was not proposed to be amended, that the reference to "on a regular basis" means annually.

FIA and ISDA suggested, with respect to § 39.13(g)(8)(iii), that the Commission should address in a re-proposed rule the initial margin issues for separate accounts raised in CFTC Letter No. 19-17.[51]

In connection with § 39.15 generally, LCH suggested that the Commission allow a DCO to use its own money, securities, or other property to deposit additional collateral in a cleared swaps customer account to prevent a shortfall without desegregating the account. LCH was of the view that allowing DCOs to deposit their own resources as a "buffer" would be consistent with the FCM's ability to make such deposits pursuant to part 22 of the Commission's regulations and further the CFTC's policy objectives to ensure that customer accounts remain segregated. LCH further stated that DCO "buffer collateral" supports strong risk management and could protect against customer account shortfalls in possible instances of operational risk or error at the DCO, which LCH believes FCMs' "buffer collateral" would not address. LCH's suggestion is beyond the scope of § 39.15 as well as the amendments to § 39.15 adopted herein.

With regard to the rule and product certification processes set forth in part 40 of the Commission's regulations, SIFMA AMG suggested that the Commission require a DCO to obtain market feedback prior to filing any certification for a new or amended rule or product. SIFMA AMG suggested that the Commission require all DCO submissions to: (1) certify that the DCO solicited market feedback and that the summary provided includes all material supporting and opposing views; (2) summarize all material supporting and opposing views received from a DCO's advisory committee and other

[51] The Commission notes that CFTC Letter 19-17 was issued after the Proposal. The Commission's failure to amend § 39.13(g)(8)(iii) in this release should not be construed as superseding CFTC Letter 19-17 in any way.

market participants within all such submissions; and (3) delineate whether such views are from clearing members or customers. The Commission did not propose to amend its part 40 regulations in this rulemaking.

X. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis on the impact.[52] The final rule adopted by the Commission will affect only DCOs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[53] The Commission has previously determined that DCOs are not small entities for the purpose of the RFA.[54] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule adopted herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

1. Background

The Paperwork Reduction Act of 1995 (PRA)[55] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring a collection of information as defined by the PRA. The rule amendments

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[52] 5 U.S.C. 601 *et seq*.

[53] 47 FR 18618 (Apr. 30, 1982).

[54] *See* 66 FR 45604, 45609 (Aug. 29, 2001)

[55] 44 U.S.C. 3501 *et seq*.

adopted herein would result in such a collection, as discussed below. A person is not required to respond to a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget (OMB). The rule amendments include a collection of information for which the Commission has previously received control numbers from OMB. As noted in the Proposal, the Commission sought to consolidate the information collections under four existing control numbers applicable to Part 39.[56] The title for this collection of information is "Requirements for Derivatives Clearing Organizations, OMB control number 3038-0076."

The Commission did not receive any comments regarding its PRA burden analysis in the preamble to the Proposal. The Commission is revising collection 3038-0076 to reflect the adoption of amendments to part 39, as discussed below, with changes to reflect adjustments that were made to the final rules in response to comments on the Proposal. The Commission does not believe the rule amendments as adopted impose any other new collections of information that require approval of OMB under the PRA.

2. Subpart A – General Requirements Applicable to DCOs

Subpart A establishes the procedures and information required for applications for registration as a DCO, including submission of a completed Form DCO accompanied by all applicable exhibits. The Commission is adopting changes to § 39.3(a)(2) that remove the requirement that DCOs use Form DCO to request an amended order of registration.

[56] The four collections are: OMB Control No. 3038-0066, Financial Resources Requirements for Derivatives Clearing Organizations; OMB Control No. 3038-0081, General Regulations and Derivatives Clearing Organizations; OMB Control No. 3038-0069, Information Management Requirements for Derivatives Clearing Organizations; and OMB Control No. 3038-0076, Risk Management Requirements for Derivatives Clearing Organizations. The Commission also proposed to change the title of the collection under OMB Control No. 3038-0076 to "Requirements for Derivatives Clearing Organizations."

In addition, the Commission is adopting changes that would move governance requirements from Subpart C to Subpart A, and making corresponding amendments to Form DCO to require that the information be included in an application for registration as a DCO, which the Commission previously estimated would move 22 burden hours per respondent from the Subpart C Election Form to Form DCO. Accordingly, the Commission's original burden estimate of two respondents, with one response annually, has not changed.

The Commission is estimating that the change to 39.3(a)(2) to eliminate the requirement for DCOs to use Form DCO to request an amended order of DCO registration will result in a decrease of one burden hour. The aggregate burden estimate for Form DCO is as follows:

Form DCO - § 39.3(a)(2)

Estimated number of respondents: 2

Estimated number of reports per respondent: 1

Average number of hours per report: 421

Estimated gross annual reporting burden: 842

The Commission also is adopting as proposed the changes to § 39.3 regarding requests for extension of the review of a DCO application, vacation of a DCO's registration, and transfer of positions. The Commission is adopting new § 39.3(a)(6), which will permit the Commission to extend the 180-day review period for DCO applications specified in § 39.3(a)(1) for any period of time to which the applicant agrees in writing. The Commission estimates that there would be two requests for extension of the DCO application per year, one per respondent, and that it will take one hour per

report. The aggregate estimate for the agreement in writing to extend the application review period pursuant to § 39.3(a)(6) is as follows:

Estimated number of respondents: 2

Estimated number of reports per respondent: 1

Average number of hours per report: 1

Estimated gross annual reporting burden: 2

The Commission is adopting amendments to § 39.3(e) to codify statutory requirements regarding vacation of registration. The revised regulation specifies information that a DCO must include in its request to vacate, and requires a DCO to continue to maintain its books and records after its registration has been vacated for the requisite statutory and regulatory retention periods. The Commission estimated that there would be one request to vacate every three years and that it would take three hours per report. The annual aggregate reporting burden for the request to vacate requirement has been divided to reflect the estimate of one request to vacate a DCO registration pursuant to § 39.3(e)(1) every three years as follows:

Estimated number of respondents: 1

Estimated number of reports per respondent: 0.33

Average number of hours per report: 1

Estimated gross annual reporting burden: 1

For recordkeeping by a DCO that has requested to vacate its registration, the Commission is adding this recordkeeping burden to OMB control number 3038-0076, which currently includes 16 responses and 50 burden hours for the recordkeeping requirement of registered DCOs. The Commission is also transferring the 100

recordkeeping burden hours currently contained in OMB control number 3038-0069 to OMB control number 3038-0076. The burden for the request to vacate requirement has been divided to reflect the estimate of one record of the request to vacate a DCO registration pursuant to § 39.3(e)(1) every three years. The combined annual aggregate recordkeeping burden estimate for subparts A and B of part 39 under OMB control number 3038-0076 is as follows:

Estimated number of respondents: 16

Estimated number of reports per respondent: 1

Average number of hours per report: 150

Estimated number of respondents-request to vacate: 1

Estimated number of reports per respondent-request to vacate: 0.33

Average number of hours per report-request to vacate: 1

Estimated gross annual recordkeeping burden: 2401[57]

The Commission proposed changes to § 39.3(f), to be renumbered as § 39.3(g), to simplify the requirements for requesting a transfer of open interest. The rule submission filing is covered by OMB control number 3038-0093, which reflects that there are 50 reports annually and that it takes two hours per response. The Commission is of the view that to the extent that the request to transfer open interest would be submitted as part of a new rule or rule amendment filing pursuant to § 40.5, the proposed change is already covered by OMB control number 3038-0093 and there is no change in the burden estimates.

[57] The total annual recordkeeping burden estimate reflects the combined figures for 16 registered DCOs with an annual burden of one response and 150 hours per response (16 x 1 x 150=2400), and one vacated DCO registration every three years with an annual burden of one hour.

3. Subpart B – Requirements for Compliance with Core Principles

a. CCO Annual Reporting Requirements – § 39.10(c)

Currently, § 39.10(c)(3) requires the CCO of a DCO to prepare, and to submit to the Commission and the DCO's board of directors, an annual compliance report containing specified information regarding the DCO's compliance with the core principles and Commission regulations. The burden for CCO annual reports, which is currently covered by OMB control number 3038-0081, is being moved to OMB control number 3038-0076. OMB control number 3038-0081 reflects that there are 12 respondents that submit CCO annual reports annually and that it takes 80 hours to complete and submit the report, and 960 hours in the aggregate. The number of respondents has been updated to 16 to reflect the current number of registered DCOs. The Commission is adopting changes that allow a DCO to incorporate by reference certain sections of prior annual compliance reports. Specifically, if the sections of the CCO annual report that describe the DCO's compliance policies and procedures have not materially changed, the current report may reference a prior year's report, provided that the referenced report was filed within the prior five years. The Commission estimates that this change will decrease the burden of preparing the CCO annual report by ten hours per respondent, and 160 hours in aggregate, by not requiring the report to repeat potentially lengthy descriptions of policies and procedures that have already been adequately described in a CCO annual report previously submitted to the Commission.

The Commission is adopting a requirement that the CCO annual report must identify, by name, rule number, or other identifier, the policies and procedures intended to comply with each core principle and applicable regulation. The Commission estimates

the change will add two hours to the burden of preparing each report, and 32 hours in the aggregate. Lastly, the Commission is adopting an amendment to § 39.10(c)(4) to require that the CCO annual report describe the process by which the report is submitted to the DCO's board or senior officer. This requirement will require DCOs to memorialize in the report a process they are already required to follow. Nonetheless, the Commission anticipates an increase of one hour in the burden for each report, and 16 hours in the aggregate due to this change. Overall, the Commission estimates that the net impact of these increases and reductions to the CCO annual report burden due to the changes is expected to be a decrease of seven hours per respondent in the existing information collection burden associated with the CCO annual report.[58] The aggregate estimate for the CCO annual report is as follows:

Estimated number of respondents: 16

Estimated number of reports per respondent: 1

Average number of hours per report: 73

Estimated gross annual reporting burden: 1,168

b. Cross-margining Programs

The Commission is adding § 39.13(i), which sets forth the procedure for DCOs to submit information related to their proposed cross-margining programs with other DCOs (or other clearing organizations). Regulation § 39.13(i) requires that the DCO provide

[58] The existing burden estimate for the CCO annual report is 80 hours per response. For the new estimate, the Commission is subtracting ten hours for the rule amendment that allows a DCO to incorporate by reference certain sections of prior annual compliance reports if the information has not changed from the prior report, adding two hours for the requirement to reference rules and policies, and one hour for the requirement that the report include documentation of the process of providing the report to the board, for a net burden per respondent of 73 hours. The recordkeeping burden is covered by OMB Control No. 3038-0076 and it is not affected by these requirements.

this information as part of a rule filing submitted for Commission approval pursuant to § 40.5. The rule submission filing is covered by OMB control number 3038-0093, which reflects that there are 50 reports annually and that it takes 2 hours per response. The Commission is of the view that to the extent that the cross-margining program would be submitted as part of a new rule or rule amendment filing pursuant to § 40.5, the proposed changes is already covered by OMB control number 3038-0093 and there is no change in the burden estimates.

c. Financial Resources Reporting

i. Annual Financial Reports

Existing § 39.11(f) requires DCOs to provide to the Commission quarterly reports of their financial resources, and § 39.19(c)(3) requires DCOs to prepare and submit audited annual financial statements. The Commission is adding § 39.11(f)(2), which incorporates in § 39.11 the annual reporting requirement that currently exists in § 39.19(c)(3). This change simply moves the existing requirement to a different location, and does not alter the existing information collection burden associated with this requirement. Accordingly, the burden for annual financial reports is being moved from OMB control number 3038-0069 to OMB control number 3038-0076, and the burden for quarterly financial reports is being moved from OMB control number 3038-0066 to OMB control number 3038-0076. The Commission is cancelling OMB control numbers 3038-0069 and 3038-0066.

The Commission is amending § 39.11(f)(2) to require that, concurrently with filing the required annual financial report, a DCO also provide: (1) a reconciliation, including appropriate explanations, of its balance sheet in the certified annual financial

statements with the DCO's most recent quarterly report when material differences exist or, if no material differences exist, a statement so indicating, and (2) such further information as may be necessary to make the required statements not misleading. The Commission estimates that this change will add an additional 20 hours per report, and 320 hours in the aggregate, to the current burden of 2606 hours per respondent, and 41,696 hours in the aggregate, in OMB control number 3038-0069, which as noted above, is being moved to OMB control number 3038-0076.

Finally, the Commission is not adopting proposed changes to § 39.11(f)(2)(i) that would have required the annual report to identify the DCO's own capital allocated to the DCO's compliance with § 39.11(a)(1), and also identify each of the DCO's financial resources allocated to the DCO's compliance with § 39.11(a)(2). The Commission previously estimated that the proposed change would add an additional 14 hours per report and 224 hours in the aggregate to the annual report burden, and has reduced its per report and total burden estimates because this additional requirement will not be adopted. The total annual burden hour estimate for this requirement, which is being moved from OMB control number 3038-0069 to OMB control number 3038-0076, is stated below.

The Commission estimates that the aggregate result of these changes will be to increase the information collection burden associated with annual financial reports from 2606 hours to 2626 hours for each DCO. The revised estimated aggregate burden for the audited annual financial statements is as follows:

Estimated number of respondents: 16

Estimated number of reports per respondent: 1

Average number of hours per report: 2626

Estimated gross annual reporting burden: 42,016

ii. Quarterly Financial Reports

The Commission is removing from § 39.11(f)(3) the requirement that certain documentation be filed quarterly; instead, DCOs would only need to include the information in their first quarterly report submission and upon any subsequent change, for an expected reduction of three hours per report. Proposed § 39.11(f)(1)(v) would have required a DCO to identify in its quarterly report the financial resources allocated to meeting its obligations under § 39.11(a)(1) and (a)(2), with an expected increase of one hour per report. The Commission has determined not to adopt this change and has reduced the burden hour estimate by one hour per report. The Commission has adjusted the burden hour estimate for quarterly reporting to reflect these changes, which result in an overall reduction in burden of three hours per report. The estimated aggregate burden for the quarterly reports as amended is as follows:

Estimated number of respondents: 16

Estimated number of reports per respondent: 4

Average number of hours per report: 7

Estimated gross annual reporting burden: 448

The Commission is adopting the amendment to § 39.11(f)(1)(ii), which required a DCO to file with the Commission a financial statement of the DCO or of its parent company, to require that the financial statement provided be that of the DCO and not the parent company. The Commission is further adopting changes to the periodic financial reporting requirements in § 39.11(f)(1)(ii) and (f)(2)(i) to permit quarterly and annual financial statements to be prepared in accordance with U.S. GAAP for DCOs

incorporated or organized under U.S. law and in accordance with either U.S. GAAP or IFRS for DCOs incorporated or organized under the laws of any foreign country. As the Commission noted in the Proposal, these changes are not expected to affect the burden.

d. Daily Reporting

The Commission proposed to amend § 39.19(c)(1)(i)(A) – (C), which requires a DCO to report margin, cash flow, and position information by house origin and separately by customer origin, to report this information by individual customer account as well. The Commission also proposed to amend § 39.19(c)(1)(i)(D) to specify that, with respect to end-of-day position information, DCOs must report both unadjusted and risk-adjusted position information. Although the Commission is clarifying, in response to comments, that certain information is required to be provided only where it is in the possession of the DCO, these clarifications do not affect the Commission's prior burden estimates. The burden associated with these changes is anticipated to result in an increase from 0.1 to 0.5 hours per report, and 2000 in the aggregate. The burden increase for daily financial reports is being moved from OMB control number 3038-0069 to OMB control number 3038-0076.

Separately, the Commission is adopting changes to § 39.19(c)(1)(i) to codify relief previously granted to fully collateralized DCOs that would reduce their daily reporting burden by not requiring information on initial margin, daily variation margin payments, other daily cash flows, and end-of-day positions. This change will reduce the burden for fully collateralized DCOs, but does not affect the burden for the majority of DCOs that are subject to daily reporting requirements. The revised aggregate burden

estimate for daily reporting being transferred to OMB control number 3038-0076 is as follows:

Estimated number of respondents: 16

Estimated number of reports per respondent: 250

Average number of hours per report: 0.5

Estimated gross annual reporting burden: 2000

The Commission is adopting amendments to § 39.13(g)(8)(i)(B) to require a DCO to have rules requiring its FCM clearing members to report customer information about futures (as well as swaps) to DCOs. This is a new information collection that is not covered by an existing OMB control number. The burden applicable to FCM clearing members is estimated as follows:

Estimated number of respondents: 64

Estimated number of reports per respondent: 250

Average number of hours per report: 0.2

Estimated gross annual reporting burden: 3200

e. Event-specific Reporting

Regulations 39.18(g) and (h) require a DCO to provide notice regarding certain exceptional events or planned changes related to a DCO's automated systems. These notice requirements are incorporated by reference in § 39.19(c)(4). Regulation 39.19(c)(4) also requires a DCO to notify the Commission of the occurrence of other specified events; for example, a decrease in financial resources or the default of a clearing member. The information collection burden associated with these notices required under § 39.19(c)(4) is currently addressed by OMB Control No. 3038-0069, but

is being moved to OMB control number 3038-0076 and consolidated with the burden in OMB control number 3038-0076 that is currently associated with § 39.18(g) and (h). The Commission is also amending § 39.16(c)(2)(ii) to require that a DCO provide public notice of a declaration of default on its website. The estimated burden of § 39.16(c)(2)(ii) is included in the estimate for event-specific reporting because it is related to the requirement under § 39.19(c)(4)(vii) that a DCO provide immediate notice to the Commission regarding the default of a clearing member. In addition, the Commission is adding to § 39.19(c)(4) several events for which DCOs will be required to provide notification if such events occur.

The Commission determined not to adopt several proposed notice requirements, and has reduced the burden estimate for event-specific notice requirements by 6 responses annually, from 20 to 14. The aggregate revised burden estimate of § 39.19(c)(4) being transferred to OMB control number 3038-0076 is as follows:

Estimated number of respondents: 16

Estimated number of reports per respondent: 14

Average number of hours per report: 0.5

Estimated gross annual reporting burden: 112

f. Public Information

The Commission is revising § 39.21 to clarify that information regarding the financial resource package available in the event of a clearing member default, which a DCO is required to post on its website pursuant to § 39.21, should be updated at least quarterly, consistent with the requirement in § 39.11(f)(1)(i)(A) to report this information to the Commission each fiscal quarter or at any time upon Commission request. The

Commission is also clarifying that other information specified in § 39.21 must be disclosed separately on the DCO's website, and not provided solely in the DCO's posted rulebook. This is a new information collection that is not covered by an existing OMB control number. The changes are estimated to add an average of two hours per response, and eight hours per respondent annually (4 quarterly reports x 2 hours per report) to OMB control number 3038-0076, for an aggregate estimated burden as follows:

Estimated number of respondents: 16

Estimated number of reports per respondent: 4

Average number of hours per report: 2

Estimated gross annual reporting burden: 128

g. Governance

As noted above, the Commission is incorporating governance provisions from subpart C, which only applies to a limited subset of DCOs, into subpart B, which is applicable to all DCOs. Therefore, the information collection burden currently associated with the governance standards of § 39.32, which results from required disclosure of major board decisions and governance arrangements, has been reallocated to § 39.24. The burden associated with subpart C governance provisions, which is currently covered by OMB control number 3038-0081, is being moved to OMB control number 3038-0076. The aggregate burden of these requirements would increase because they will be applicable to all registered DCOs. The aggregate burden estimate for § 39.24 that is associated with the required ongoing disclosure of major board decisions and governance arrangements by registered DCOs, including DCOs that are not currently subject to subpart C, is estimated as follows:

Estimated number of respondents: 16

Estimated number of reports per respondent: 6

Average number of hours per report: 3

Estimated gross annual reporting burden: 288

h. Legal Risk

The Commission is adopting changes to § 39.27 that will require a DCO that provides clearing services outside the United States to ensure that the legal opinion that a DCO must obtain to provide those services is accurate and up to date. The new subsection also requires the DCO to submit an updated legal memorandum to the Commission following all material changes to the analysis or content contained in the memorandum. This requirement will apply only to DCOs offering clearing services outside the U.S. This is a new information collection that is not covered by an existing OMB control number. The Commission expects that circumstances necessitating submission of an updated legal memorandum will occur infrequently, not more than once every three years, and has estimated the aggregate burden as follows:

Estimated number of respondents: 1

Estimated number of reports per respondent: 0.33

Average number of hours per report: 20

Estimated gross annual reporting burden: 6.6

4. Subpart C – Provisions Applicable to SIDCOs and DCOs that Elect to be Subject to the Provisions of Subpart C

Because the Commission is removing and reserving § 39.32 and Exhibit B of the subpart C Election Form and moving the governance requirements to Form DCO and §

39.24, the corresponding information collection burden under § 39.32, currently covered by OMB control number 3038-0081, will be eliminated and the burden under the subpart C Election Form will be reduced. Further, in consolidating the burden for subpart C, currently in OMB control number 3038-0081, with OMB control number 3038-0076, the Commission has reassessed the burden for the subpart C Election Form, and is adjusting certain burden hour estimates and numbers of respondents. Specifically, the Commission is reducing the number of burden hours estimated for the certification portion of the subpart C Election Form from 25 hours to 2 hours, because the prior estimate overstated the burden necessary to prepare the one-page certification. The burden that is currently estimated separately for the certifications, exhibits, and supplements/amendments to the subpart C Election Form have been combined because a DCO must provide all the required information in order to submit a complete subpart C Election Form.[59]

Additionally, the Commission is updating the estimated numbers of respondents for subpart C to reflect the current number of SIDCOs and subpart C DCOs, and a reduction, from five to one, in the anticipated number of DCOs newly electing to be subject to subpart C. The Commission is also updating the number of responses for the rescission notices that must be provided to clearing members based on an average of the current number of clearing members at subpart C DCOs. The Commission also is combining burden estimates that previously were estimated separately for SIDCOs only and for all subpart C DCOs; that distinction was made in the initial implementation of

[59] The current burden for the subpart C Election Form exhibits is 155 hours per response; 22 of these hours are being moved to the Form DCO burden as discussed in the Form DCO section above, leaving 133 hours. Also, the Commission is reducing the burden currently attributed to amendments to the subpart C Election Form and consolidating it with the burden for supplemental information because in practice, DCOs have not frequently filed amendments. Consolidating the certification (2 hours), exhibits (133 hours), and supplemental or amended information (45 hours) results in a burden of 180 hours.

subpart C but is no longer necessary since the subpart C rules have been in place for several years. The revised estimated aggregate reporting burden related to the subpart C Election Form, notices and disclosure being transferred to OMB control number 3038-0076 is as follows:

Subpart C Election Form

Estimated number of respondents: 1

Estimated number of reports per respondent: 1

Average number of hours per report: 180

Estimated gross annual reporting burden: 180

Subpart C Withdrawal Notice

Estimated number of respondents: 1

Estimated number of reports per respondent: 1

Average number of hours per report: 2

Estimated gross annual reporting burden: 2

Subpart C Rescission Notice

Estimated number of respondents: 1

Estimated number of reports per respondent: 16

Average number of hours per report: 3

Estimated gross annual reporting burden: 48

PFMI Disclosures

Estimated number of respondents: 1

Estimated number of reports per respondent: 1

Average number of hours per report: 200

Estimated gross annual reporting burden: 200

Quantitative Disclosures

Estimated number of respondents: 1

Estimated number of reports per respondent: 1

Average number of hours per report: 80

Estimated gross annual reporting burden: 80

Additionally, the Commission is adding to § 39.37 a notification requirement regarding changes to the PFMI disclosure framework for SIDCOs and subpart C DCOs, which is expected to increase, by one hour, the existing information collection burden of 80 hours per response. The aggregate estimated burden for § 39.37 is stated below:

Subpart C Disclosure Framework Requirements - § 39.37

Estimated number of respondents: 9

Estimated number of reports per respondent: 1

Average number of hours per report: 81

Estimated gross annual reporting burden: 729

Because the Commission is moving all of the burden estimates for subpart C from OMB control number 3038-0081 to OMB control number 3038-0076 and cancelling information collection 3038-0081, the existing burden estimates for §§ 39.33, 39.36, 39.38, and 39.39, and certain disclosures under § 39.37, as updated to reflect the current number of SIDCOs and subpart C DCOs, are restated below. In addition, for the quantitative disclosures required under § 39.37, which may be updated as frequently as quarterly, the Commission has updated the number of reports per respondent from one to four annually, and has distributed the existing 35 burden hours among the four reports

(35/4=8.75, rounded to 9). The updated subpart C reporting burden estimates for the changes to Subpart C - Provisions is as follows:

Subpart C Financial and Liquidity Resource Documentation - §39.33

Estimated number of respondents: 9

Estimated number of reports per respondent: 1

Average number of hours per report: 120

Estimated gross annual reporting burden: 1080

Subpart C Stress Test Results - §39.36

Estimated number of respondents: 9

Estimated number of reports per respondent: 16

Average number of hours per report: 14

Estimated gross annual reporting burden: 2016

Subpart C Quantitative Disclosures - §39.37

Estimated number of respondents: 9

Estimated number of reports per respondent: 4

Average number of hours per report: 9

Estimated gross annual reporting burden: 324

Subpart C Transaction, Segregation and Portability Disclosures - §39.37

Estimated number of respondents: 9

Estimated number of reports per respondent: 1

Average number of hours per report: 35

Estimated gross annual reporting burden: 315

Subpart C Efficiency and Effectiveness Review - §39.38

Estimated number of respondents: 9

Estimated number of reports per respondent: 1

Average number of hours per report: 3

Estimated gross annual reporting burden: 27

Subpart C Recovery and Wind-down Plan - §39.39

Estimated number of respondents: 9

Estimated number of reports per respondent: 1

Average number of hours per report: 480

Estimated gross annual reporting burden: 4320

With respect to the subpart C recordkeeping burden that the Commission is moving from OMB control number 3038-0081 to OMB control number 3038-0076, the Commission also has combined the burden estimates for financial and liquidity resources, and liquidity resource due diligence and testing because these requirements apply to the same set of respondents. As noted above, the general recordkeeping requirements that were previously estimated separately for SIDCOs and all subpart C DCOs also have been combined. The updated subpart C recordkeeping burden estimates are restated below:

Subpart C Recordkeeping - General

Estimated number of respondents: 9

Estimated number of reports per respondent: 110

Average number of hours per report: 10

Estimated gross annual recordkeeping burden: 9900

Subpart C Recordkeeping - Financial and Liquidity Resources, Liquidity Resource Due Diligence and Testing

Estimated number of respondents: 9

Estimated number of reports per respondent: 8

Average number of hours per report: 10

Estimated gross annual recordkeeping burden: 720

C. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[60] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors below.[61]

In the Proposal, the Commission established, based on the subject matter of the proposals, that it did not consider any of the proposed changes contained therein to have any significant impact on price discovery. The Commission received no responses from commenters with respect to its analysis regarding price discovery. For the remaining areas, where the Commission believed the costs or benefits of the Proposal were significant, the Commission addressed, section by section, the qualitative costs or

[60] 7 U.S.C. 19(a).

[61] The Commission has not identified any impact that the final rule would have on price discovery.

benefits associated with the Proposal. Where reasonably possible, the Commission has endeavored to estimate quantifiable costs and benefits. Where quantification is not feasible, the Commission identifies and describes costs and benefits qualitatively. The Commission requested comments on the costs and benefits associated with the proposed rules. In particular, the Commission requested that commenters provide data and any other information or statistics that the commenters relied on to reach any conclusions regarding the Commission's proposed considerations of costs and benefits. The Commission received comments that indirectly address the costs and benefits of the proposal. These comments are discussed as relevant below.

The Commission notes that the consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving U.S. firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of the rules on all activity subject to the amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under section 2(i) of the CEA.[62] In particular, the Commission notes that some entities affected by this rulemaking are located outside of the United States. The Commission has carefully considered alternatives suggested by commenters, and in a

[62] 7 U.S.C. 2(i).

number of instances, for reasons discussed in detail above, has adopted such alternatives or modifications to the proposed rules where, in the Commission's judgment, the alternative or modified standard accomplishes the same regulatory objective in a more cost-effective manner. Where the Commission declined to accept alternatives suggested by commenters, the costs and benefits of the alternatives are discussed below.[63]

2. Economic Baseline

The baseline for the Commission's consideration of the costs and benefits of this rulemaking are the following requirements prior to taking into account the final amendments being adopted herein: (1) the DCO Core Principles set forth in section 5b(c)(2) of the CEA; (2) the general provisions applicable to DCOs under subparts A and B of part 39 of the Commission's regulations; (3) the Commission's regulations in subpart C of part 39, which establish additional standards for compliance with the core principles for those DCOs that are designated as SIDCOs or have elected to opt-in to the subpart C requirements in order to achieve status as a qualified central counterparty (QCCP); (4) Form DCO in Appendix A to part 39; (5) Subpart C Election Form in Appendix B to part 39; and (6) §§ 1.20(d) and 140.94.

The Commission notes that some of the rules codify existing no-action relief and other guidance issued by Commission staff. To the extent that market participants have relied upon such relief or staff guidance, the actual costs and benefits of the rules, as discussed in this section, may not be as significant.

[63] The Commission is not discussing the costs and benefits of alternatives that would require a proposal prior to adoption. The Commission will consider proposing such alternatives in the future and will discuss their costs and benefits in any proposing release.

3. Comments on Cost-Benefit Considerations Generally

ICE commented that the Commission insufficiently considered the costs and benefits of those proposed rules not related to Project KISS and that the Commission should re-propose those rules in a separate rulemaking that more fully considers costs to DCOs. CME stated that the proposed amendments, in aggregate, will increase, rather than reduce, the regulatory burdens on DCOs and the markets they clear. The Commission acknowledges these comments and, as discussed further below, notes that it has modified or determined not to finalize many of the proposed rules in light of specific comments related to costs.

4. Written Acknowledgment from Depositories – § 1.20

Regulation 1.20(d)(1) requires an FCM to obtain a written acknowledgment from each depository with which the FCM deposits futures customer funds. The regulation provides that an FCM is not required to obtain a written acknowledgment from a DCO that has adopted rules providing for the segregation of customer funds, but other provisions of § 1.20(d) seem to suggest that a DCO must provide the written acknowledgment regardless. The Commission is amending as proposed § 1.20(d) to clarify the Commission's intent that the requirements listed in § 1.20(d)(3) through (6) do not apply to a DCO, or to an FCM that clears through that DCO, if the DCO has adopted rules that provide for the segregation of customer funds.

The Commission did not receive comments on the costs associated with these amendments. As to the benefits, FIA and ISDA commented that clarifying the applicability of § 1.20(d)(3) through (6) avoids redundant information-sharing arrangements.

The Commission believes the amendments to § 1.20(d) will benefit FCMs and DCOs by reducing uncertainty as to when an FCM must obtain a written acknowledgment from a DCO.

The Commission does not believe the amendments would impose any additional costs on DCOs or FCMs, as it is clarifying the circumstances under which an acknowledgment letter would not be required.

As to the costs and benefits in light of the section 15(a) factors, in consideration of section 15(a)(2)(B) of the CEA, the Commission believes that the amendments to § 1.20(d) would not negatively impact the protection of market participants and the public, including DCOs' clearing members and their customers, as the amendments merely clarify the instances in which a DCO, or an FCM that clears through that DCO, would not need to file an acknowledgment letter because the DCO has adopted rules that provide for the segregation of customer funds. The Commission believes that the amendments to § 1.20(d) will result in an incremental increase in efficiency for FCMs that follows from reducing any previous uncertainty regarding when they must obtain an acknowledgment letter. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

5. Definitions – § 39.2

Regulation 39.2 sets forth definitions applicable to terms used in part 39 of the Commission's regulations. The Commission proposed amendments to the definition of "business day," "customer," "customer account or customer origin," and "key personnel" in § 39.2 to maintain consistency with terms defined elsewhere in Commission regulations and to provide clarity with respect to the use of these terms. The Commission

is also adding new definitions for “enterprise risk management” and “fully collateralized position” to correspond with amendments that the Commission proposed elsewhere in part 39.

The Commission did not receive comments on the costs or benefits associated with these amendments. The Commission received comments from CME, ICE, and Nadex that suggested clarifications to the proposed definitions, and the Commission has incorporated these suggestions in the final rule.

The amendments to § 39.2 benefit DCOs by clarifying existing part 39 requirements, such as what constitutes a Federal holiday for purposes of applying the definition of “business day.” The new definitions in § 39.2 for “enterprise risk management” and “fully collateralized position” are necessary to understanding the new rules for an enterprise risk management framework it is adopting in § 39.10(d) and exceptions from several requirements for fully collateralized positions throughout part 39, and hence benefit DCOs by helping them understand the new rules mentioned above. The amendments to the definitions of “customer” and “customer account or customer origin” also have the benefit of clarification as they help to avoid conflicts with similar terms defined in § 1.3.

The Commission does not believe the new and amended definitions in §39.2 would impose additional costs on DCOs, as they are not imposing additional requirements, but rather defining terms that are used in other provisions.

In addition to the discussion above, the Commission evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(B) of the CEA, the Commission believes that, to the

extent that the amended definitions provide clarity, reduce any previous uncertainty, or help to avoid conflicts with similar terms that are defined in different sections, these effects, individually and in aggregate, may yield increased efficiency for DCOs. After considering the other section 15(a) factors, the Commission believes they are not implicated by the amendments.

6. Procedures for Registration – § 39.3 and Form DCO

The Commission is adopting several changes to its procedures for DCO registration, including: application procedures – § 39.3(a), stay of application review – § 39.3(b), request to amend an order of registration – § 39.3(a)(2) and § 39.3(d), dormant registration – § 39.3(e), vacation of registration – § 39.3(f), and request for transfer of registration and open interest – § 39.3(g).

The amendments to § 39.3(a) improve clarity and consistency of the rules, provide greater flexibility to DCO applicants submitting supplemental information, clarify references to the portion of the Form DCO cover sheet and other application materials that will be made public; and, in new § 39.3(a)(6), permit the Commission to extend the 180-day review period for DCO applications for any period of time to which the applicant agrees in writing. Furthermore, the Commission is amending § 39.3(a)(2) to eliminate the required use of Form DCO to request an amended order of registration from the Commission.

In § 39.3(b)(2), the Commission is clarifying the stay of the application review process and adopting a change to replace the inaccurate "designation" with "registration.

In § 39.3(d), the Commission is also adopting a new rule to establish a separate process for requests to amend an order of registration.

Regulation § 39.3(e) establishes the procedure for a dormant DCO to reinstate its registration before it can begin "listing or relisting" products for clearing. The Commission is renumbering § 39.3(d) as § 39.3(e) and adding clarification and accuracy by replacing "listing or relisting" with "accepting."

Amendments to § 39.3(f) renumber current § 39.3(e) as § 39.3(f)(1) and add provisions under § 39.3(f)(1) regarding procedures for a DCO seeking to vacate its registration. The Commission is also adopting § 39.3(f)(2) to streamline the process of notifying all registered entities of a vacation request filed with the Commission by requiring the Commission to post the required documents on its website.

In § 39.3(f), which is renumbered as § 39.3(g), the Commission is simplifying the requirements for requesting a transfer of open interest and removing references to transfers of registration and requirements regarding corporate changes. Furthermore, the amendments will require transfer requests to be submitted under § 40.5.

In addition, the Commission is revising Form DCO to correspond with amendments to part 39 and to reflect Commission staff's experience with DCO applications. Finally, the Commission is revising the Subpart C Election Form to better reflect the requirements in subpart C of part 39 and to more closely align the format of the Subpart C Election Form with Form DCO by specifying the information and/or documentation that must be provided by a DCO as part of its petition for subpart C election.

The Commission did not receive comments on the costs associated with these amendments.

The Commission believes the amendments to the DCO registration procedures in § 39.3, Form DCO, and the Subpart C Election Form will make the procedures more transparent to applicants. This should allow prospective DCO applicants to more efficiently prepare complete applications, which should reduce the need for Commission staff to request additional information after receiving the application and therefore reduce the overall time needed to review an application. For example, the Commission is modifying Form DCO to clarify the types of information that are required and align the exhibits with the amendments under part 39. Similarly, the Commission is modifying the Subpart C Election Form to more closely align its format with Form DCO. These amendments may reduce an applicant's time and resources used in responding to staff inquiries during the application review process, as DCO applicants would be better able to provide more complete, accurate, and nuanced application materials. The amendments to § 39.3 also adapt certain language to better reflect terminology applicable to DCOs in § 39.3(a)(1) through (2) and (b), which could help to avoid confusion for potential DCO applicants and existing DCOs. Furthermore, the Commission is codifying its long-standing procedures for staying an application in § 39.3(a)(6) to provide DCO applicants with greater transparency of the registration process.

The Commission is amending § 39.3(a)(2) and Form DCO to eliminate the required use of Form DCO to request an amended order of registration from the Commission. This change better reflects current practice, where a DCO is permitted to file a request for an amended order with the Commission rather than submitting Form DCO. Similarly, the Commission is specifying in § 39.3(f) the types of information that the Commission currently requests to determine whether to vacate an order of

registration, which will provide DCOs with more transparency as to the types of information that are required as part of a request to vacate an order of registration. The recordkeeping requirements in § 39.3(f)(1)(iii) through (iv), which require a vacated DCO to continue to maintain the books and records that it would otherwise be required to maintain as a registered DCO, provide the benefit of ensuring that a DCO does not vacate its registration and destroy its books and records in order to hinder or avoid Commission action.

The Commission is also streamlining the procedures for requesting a transfer of open interest by separating those procedures in existing § 39.3(g) from the procedures to notify the Commission of a DCO corporate structure or ownership change. Under the amendments to § 39.3(g), a DCO seeking to transfer its open interest will be required to submit rules for Commission approval pursuant to § 40.5, rather than submitting a request for an order at least three months prior to the anticipated transfer. This will simplify the existing requirements and permit the transfer to take effect after a 45-day Commission review period.

The Commission believes DCOs would not incur any additional costs associated with the procedures to request an amended order of registration in § 39.3(d), as a DCO would incur the same costs if requesting to amend its order of registration by using the current Form DCO.[64] In stating support for this amendment, ICE noted that it believes this modification will help streamline the process for a DCO to file a request for an amended order.

[64] The Commission estimates for PRA purposes that there would be a reduction in the burden incurred by DCOs, as discussed in section X.B.2 above.

As to the procedures to vacate a DCO's registration in § 39.3(f), the Commission believes the costs would not be substantial. Any costs incurred by DCOs would more likely be due to the recordkeeping requirements in § 39.3(f)(1)(iii) through (iv), which require a vacated DCO to continue to maintain the books and records that it would otherwise be required to maintain as a registered DCO pursuant to § 1.31(b).

Finally, the Commission is amending § 39.3(g) to permit a DCO seeking to transfer its open interest to submit rules for Commission approval pursuant to § 40.5, rather than submitting a request for an order at least three months prior to the anticipated transfer. The Commission does not anticipate that DCOs would incur any additional costs as a result of these procedural changes beyond the costs to prepare a § 40.5 rule submission, which are likely to be similar to the costs of requesting an order approving the transfer. Additionally, the information requested in § 39.3(g) reflects information that DCOs are already required to provide in order to transfer their open interest.

As an alternative, ICE suggested that it may be appropriate for a transfer to take effect pursuant to a rule self-certification under § 40.6 where the transfer does not raise any particular novel issues or concerns. ICE further requested that the Commission clarify that it may, in appropriate circumstances, take action on a transfer request in less than 45 days, both in circumstances that do not raise particular concerns and in exigent or distressed circumstances in which the full period may not be necessary or feasible. The Commission considered ICE's suggestions but still believes that the 45-day review period under § 40.5, rather than the 10 business day review period under § 40.6(a), is necessary in order to determine whether any concerns exist. However, the Commission notes that the same outcome—a shorter review period where circumstances allow—can be achieved

by the Commission acting on a transfer request in less than 45 days as permitted by § 40.5(g).

The Commission does not believe DCOs would incur additional costs from any of the other amendments to the DCO registration procedures in § 39.3. In addition to the discussion above, the Commission evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. The Commission believes that the changes to the registration procedures will maintain the protection of market participants and the public by ensuring that DCOs are in compliance with the DCO Core Principles and Commission regulations. The changes will also increase efficiency by making the registration process more transparent. This will enable DCOs and DCO applicants to provide more complete documentation in a more concise manner, thereby reducing the time and resources needed to comply with such procedures. To the extent that the changes to the registration procedures act to streamline the application process, as well as to establish the process for vacating a DCO's registration, those changes will result in a more efficient process for registering as a DCO and for vacating that registration.

Additionally, the Commission believes that the amendments to § 39.3(g), which addresses a request to transfer a DCO's open interest, will result in increased efficiency because the amendments streamline and improve the existing process, as DCOs would be able to use the existing process under § 40.5, with which DCOs are already familiar and which requires a shorter review period. As a result, DCOs may obtain approval to transfer their open interest in a timelier manner, which may benefit their operational and business needs. To that end, the Commission believes that these changes will have a beneficial effect on the risk management practices of DCOs, inasmuch as the changes

may modestly reduce the risks that may accompany the transfer of open interest to another DCO. Moreover, the recordkeeping requirements for vacated DCOs will protect market participants and the public by ensuring that a DCO does not vacate its registration and destroy its books and records in order to hinder or avoid Commission action. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

7. Fully Collateralized Positions

The Commission is amending certain regulations in part 39 to address fully collateralized positions, which do not pose the same risks that the regulations are meant to address. As discussed in above, fully collateralized positions do not expose DCOs to many of the risks that traditionally margined products do, as full collateralization prevents a DCO from being exposed to credit risk stemming from the inability of a clearing member or customer of a clearing member to meet a margin call or a call for additional capital. This limited exposure and full collateralization of that exposure renders certain provisions of part 39 inapplicable or unnecessary. As a result, the Division of Clearing and Risk has granted relief from certain provisions of part 39 to DCOs that clear fully collateralized positions.[65] The Commission is amending certain regulations consistent with that relief.[66]

The amendments are based on an assessment of how the DCO Core Principles and part 39 apply to fully collateralized positions, as well as the relief previously granted

[65] *See* CFTC Letter No. 14-04 (January 16, 2014) (granting exemptive relief to the North American Derivatives Exchange, Inc. (Nadex)); CFTC Letter No. 17-35 (July 24, 2017) (granting exemptive relief to LedgerX).

[66] The Division also issued interpretive guidance to Nadex for other provisions in part 39. CFTC Letter No. 14-05 (January 16, 2014). The interpretive guidance may be relied on by third parties, and is not impacted by this rulemaking.

to DCOs that clear such positions. The Commission believes the amendments will not negatively impact prudent risk management at any DCO, regardless of the types of products cleared. The costs and benefits of these changes are discussed in conjunction with the discussion of the related provisions below.

8. DCO Chief Compliance Officer – § 39.10(c)

The Commission is amending § 39.10(c) as proposed. These amendments will allow a DCO to have its CCO report to the senior officer responsible for the DCO's clearing activities. This would provide DCOs with flexibility to structure the management and oversight of the CCO based on the DCO's particular corporate structure, size, and complexity. This may increase efficiency, reduce costs, and improve the quality of the oversight of the CCO, as the senior officer overseeing the DCO's clearing activities would be better positioned to provide day-to-day oversight of the CCO. The Commission believes that this amendment will not increase costs to DCOs since it does not require any change in their practices.

The Commission is also amending certain requirements in § 39.10(c) relating to the CCO annual report to permit DCOs to incorporate by reference, for up to five years, any descriptions of written policies and procedures that have not materially changed since they were described within the most recent CCO annual report. CME noted that these revisions would reduce the requirement to provide duplicative information contained in previous reports and thus reduce the administrative burden on the DCO's compliance staff. The Commission agrees with CME's comment.

The Commission is amending § 39.10(c) to require that a DCO identify its compliance policies and procedures by name, rule number, or other identifier; describe

the process by which the annual report was submitted to the board of directors or senior officer; and allow incorporation by reference in limited circumstances. The Commission notes that a number of DCOs already provide this information. Therefore, the Commission expects that the changes to § 39.10(c) would not impose additional costs on those DCOs, but would impose additional costs on DCOs that do not currently provide this information. The Commission did not receive comments on the costs associated with this amendment.

Furthermore, Nadex suggested that the Commission consider conforming the language of the CCO's duties and annual report requirements in § 39.10 with that of § 3.3, which pertains to the CCOs of FCMs, swap dealers, and major swap participants. The Commission may consider this in a separate proposal.

As to the costs and benefits in light of the section 15(a) factors, the Commission believes that certain of the changes to § 39.10(c) will enhance the protection of market participants and the public. Specifically, the changes to a CCO's reporting lines, along with the added clarity regarding proper identification of the compliance policies and procedures in the CCO annual report, is anticipated to enhance the compliance function at DCOs, which may have the corresponding effect of improving the protections for market participants and the public. Additionally, in consideration of section 15(a)(2)(B) of the CEA, the amendment to permit incorporation by reference in the CCO annual report will increase efficiency in preparing that report. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

9. Enterprise Risk Management – § 39.10(d)

The Commission is adopting § 39.10(d) to require a DCO to have a program of enterprise risk management that identifies and assesses sources of risk and their potential impact on the operations and services of the DCO and identify an enterprise risk officer. The Commission believes that requiring DCOs to establish and maintain an enterprise risk management program may encourage DCOs to strengthen their existing programs, especially if a DCO lacks an enterprise risk management program that is commensurate with industry best practices. This may benefit the resiliency of individual DCOs' operations by requiring DCOs to proactively identify potential risks on an enterprise-wide basis beyond those that a DCO might otherwise identify pursuant to its compliance with specific requirements in part 39. Compliance with § 39.10(d) by DCOs who are affiliated with other registered entities such as DCMs, SEFs, and swap data repositories may also benefit the financial markets more broadly, as risks identified and addressed by the DCO may also apply to their affiliates within the derivatives markets.

The Commission has found that DCOs that proactively identify and manage foreseeable risks have generally implemented enterprise risk management frameworks, in whole or in part, to identify, assess, and manage sources of risk in a manner similar to the requirements adopted in § 39.10(d)(1) through (4). Therefore, the Commission believes that any additional costs associated with these requirements will be minimal relative to existing industry practice for those DCOs whose enterprise risk management programs are commensurate with industry best practices. The regulation will impose additional costs on DCOs that need to change their practices to comply with the regulation, but the extent of the costs will depend on the extent of the changes required. In addition, as

DCOs would be able to comply with this requirement by including the DCO in the enterprise risk management program administered by the DCO's parent company or affiliate, the Commission believes any additional costs to comply with proposed § 39.10(d) could be reduced if the DCO is able to share the costs of compliance with its parent or affiliates.

MGEX expressed concern regarding the burdens of developing an enterprise risk management program and also raised the possibility that procedures developed as part of the enterprise risk management program might conflict with other risk management procedures. The Commission notes that it has sought to avoid requiring specific standards and methodologies with respect to enterprise risk management, preferring instead that DCOs develop a program based on the specific characteristics of that DCO. Regulation 39.10(d)(3), as adopted, requires a DCO to follow generally accepted standards and industry best practices in the development and review of its enterprise risk management framework, assessment of the performance of its enterprise risk management program, and management and mitigation of risk to the derivatives clearing organization. In the interests of offering guidance, the Commission specified in the Proposal two industry standards as examples of the types of standards that would reasonably be considered in the development of an enterprise risk management program.[67] Although the Commission expects that a DCO will analyze its risks through an enterprise risk management framework and develop and modify its program accordingly, the Commission would also expect that a DCO in good standing would be able to build upon at least some elements of its current risk management framework, thus

[67] *See* Derivatives Clearing Organization General Provisions and Core Principles, 84 FR 22232, n. 24.

reducing the costs of developing an enterprise risk management program relative to creating an entirely new structure from scratch.

LCH, in responding to a request for comment regarding whether the same individual should be permitted to serve as both the chief risk officer and the enterprise risk officer, suggested that requiring separate individuals to serve the two roles would be duplicative and inefficient. The Commission has finalized § 39.10(d) without adding language prohibiting the same individual from serving both roles, although it has noted that the nature and structure of the organization could be such that it will not be possible for one individual to do so without violating the requirements of the position.

The Commission has added additional language to § 39.10(d)(4) requiring that the enterprise risk officer have access to the board of directors to ensure that the board receives reports and information from the enterprise risk officer, regardless of the formal reporting relationship. The Commission believes that such access will improve governance by ensuring that issues or concerns regarding enterprise risk management will be conveyed to the board. The Commission does not believe that requiring such access will impose any material costs.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(D) of the CEA, the Commission believes that the proposal to require a DCO to have a formal enterprise risk management program will improve DCO risk management practices by ensuring that DCOs have a process for identifying and assessing potential risks to the DCO on an enterprise-wide basis, thereby enhancing protection of market participants and the public and the financial integrity of

the derivatives markets. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

10. Financial Resources – § 39.11

The Commission is amending § 39.11 to, among other things: make it more consistent with Core Principle B; clarify certain items including how a DCO's largest financial exposure should be calculated in § 39.11(c); require that the financial statements submitted each quarter be that of the DCO and not the parent company; require that financial statements be prepared in accordance with U.S. GAAP or, for a DCO that is incorporated or organized under the laws of any foreign country, IFRS; and require a DCO to annually submit a reconciliation of its balance sheet in the audited year-end financial statement with the balance sheet in the DCO's financial statement for the last quarter of the fiscal year when material differences exist. Except where noted below, the Commission is amending § 39.11 as proposed.

The Commission is finalizing additional minimum requirements that a DCO will have to follow in determining its financial exposure in accordance with § 39.11(c)(1). In particular, the Commission is requiring a DCO to calculate its largest financial exposure net of the clearing member's required initial margin amount on deposit. Additionally, the Commission is requiring that when stress tests produce losses in both customer and house accounts, a DCO must combine the customer and house stress test losses of each clearing member using the same stress test scenario. New § 39.11(c)(2)(iii) allows a DCO to net gains in the house account with losses in the customer account, if permitted by its rules, but explicitly prohibits a DCO from netting losses in the house account with gains in the customer account. New § 39.11(c)(2)(iv) allows a DCO, with respect to a clearing

member's cleared swaps customer account, to net customer gains against customer losses only to the extent permitted by the DCO's rules. The Commission also is amending the requirements of § 39.11(c) to state that they do not apply to fully collateralized positions.

Commenters generally supported the proposed amendments to § 39.11(c) and there were no comments related to costs. In response to questions and requests for clarification, the Commission is modifying proposed § 39.11(c)(2)(i) to clarify that, for purposes thereof, required margin includes any add-ons, such as concentration charges and liquidity charges, and that only required margin (including add-ons) may be considered.

The Commission believes these adjustments to the methodology used to calculate a DCO's financial resources requirement in § 39.11(c) will focus a DCO's analysis on the resources that would actually be available to it during times of stress. This approach is consistent with guidance issued by CPMI-IOSCO suggesting that, when assessing the adequacy of their financial resources, central counterparties should take into account only prefunded financial resources and ignore voluntary excess contributions. Central counterparties that wish to be considered QCCPs are expected to follow this guidance, so having Commission requirements that are consistent with the guidance should improve efficiencies for the industry while more prudently managing financial risk. The clarification that required margin includes any add-ons should also increase efficiencies for the industry while more prudently managing financial risk.

Several changes made to § 39.11, such as amending § 39.11(d)(2) to replace the phrase "those obligations" with "the total amount required under paragraph (a)(1) of this section" and the amendments to § 39.11(e)(1)(iii) and § 39.11(e)(3) to clarify that a DCO

may use a committed line of credit or similar facility to satisfy § 39.11(e)(1)(ii) or § 39.11(e)(2) as long as it is not counted twice, are clarifications that do not impose additional burdens but have the benefit of more clearly articulating what is required. The Commission is finalizing these rules as proposed. The Commission is amending § 39.11(f)(1)(ii) to require that the financial statement provided be that of the DCO and not the parent company in order to better and more accurately assess the financial strength of the DCO. The Commission believes it would also benefit the DCO to be able to assess its compliance with Core Principle B and § 39.11 and its financial health separately from that of its parent. MGEX suggested that the proposed revisions to § 39.11(f)(1)(ii) requiring that the financial statement provided be that of the DCO and not the parent company should only apply to DCOs that are part of a complex corporate structure, and not to simple parent/subsidiary structures. MGEX stated that compiling and submitting separate financial statements for a simple parent/subsidiary structure would result in increased expenses while providing no material benefit. The Commission is declining to adopt this suggestion because the Commission believes it will benefit from understanding the financial condition of a DCO separately from that of its parent company and will be better equipped to protect market participants and the public with this additional information. Moreover, separate legal entities should be able to prepare separate financial statements, and there is no bright line distinguishing between simple and complex corporate structures. The Commission acknowledges that the rule may be more costly for certain DCOs relative to MGEX's suggested alternative, but the Commission does not believe that these additional costs will be large.

The Commission is not adopting its proposed changes to § 39.11(f)(1)(ii) and § 39.11(f)(2)(i) that would have required DCOs to identify assets required to meet the resource requirements of § 39.11(a)(1) and (2). The Commission is persuaded by comments from CME and Eurex that certain requirements of U.S. GAAP and IFRS, respectively, may preclude a company from including this information on its balance sheet. Instead, the Commission is encouraging DCOs to identify the assets required to meet the resource requirements of § 39.11(a)(1) and (2) to the extent that they can, given applicable accounting standards. The Commission notes that providing such information would facilitate its review of DCOs' financial statements and potentially reduce the burden on DCOs to respond to staff inquiries regarding their financial statements and compliance with § 39.11(a)(1) and (2). The Commission is amending the periodic financial reporting requirements in § 39.11(f)(1)(ii) and (f)(2)(i) to permit quarterly and annual financial statements to be prepared in accordance with U.S. GAAP for DCOs incorporated or organized under U.S. law and in accordance with either U.S. GAAP or IFRS for DCOs incorporated or organized under the laws of any foreign country. These amendments will retain flexibility for non-U.S. DCOs and provide greater transparency to DCOs and DCO applicants of the financial reporting requirements. The Commission is also requiring in § 39.11(f)(2) that, in addition to its audited year-end financial statement, a DCO submit a reconciliation, including appropriate explanations, of its balance sheet when material differences exist between it and the balance sheet in the DCO's financial statement for the last quarter of the fiscal year or, if no material differences exist, a statement so indicating. Without such an explanation, Commission staff may be under the impression that the representations are false or incorrect. This

requirement gives DCOs the opportunity to correct any discrepancies and avoid unnecessary follow-up questions from Commission staff.

The Commission is amending § 39.11(f)(1)(iv) to incorporate the language of current § 39.11(f)(4), which requires a DCO to submit its quarterly report no later than 17 business days after the end of the DCO's fiscal quarter (or at a later time as permitted by the Commission in its discretion in response to a DCO's request for an extension). CME recommended that, for the first three quarters of the fiscal year, the due dates for submitting the DCO quarterly financial resource reports be aligned with the due dates for a DCM's submission of financial resource reports pursuant to § 38.1101(f)(4), which requires the reports to be filed no later than 40 calendar days after the end of the DCM's first three fiscal quarters. The Commission is declining to take CME's recommendation because the reporting dates currently in effect are the same as those for FCMs and broker/dealers reporting dates under the Commission's regulations. The Commission believes that DCO financial report filings should be aligned with FCMs rather than with DCMs because FCMs, unlike DCMs, hold initial margin and default funds and collect variation margin, which clearly and directly relate to the financial resources available to DCOs. The Commission acknowledges that § 39.11(f)(1)(iv) may be more costly for CME and other DCOs that are affiliated with DCMs relative to CME's suggested alternative, but the Commission does not believe that these additional costs will be large.

DCOs could incur initial costs to recalibrate the method by which they compute their financial resources to comply with § 39.11(c). If a DCO does not have financial resources sufficient to comply with § 39.11(a)(1) based on its computation pursuant to § 39.11(c), the DCO would have to procure additional financial resources. Because DCOs

vary in terms of their size and level of clearing activity, the Commission believes they are better positioned to provide cost estimates in this regard.

DCOs may incur costs to prepare their own financial statements (as opposed to being included in the financial statements of the parent company) in accordance with § 39.11(f)(1)(ii). For DCOs that already prepare their own financial statements, the Commission believes that incremental costs will be minimal. Had the Commission adopted MGEX's suggestion to apply the requirement that the financial statement provided be that of the DCO and not the parent company only to DCOs that are part of a complex corporate structure, DCOs that are part of a simple parent/subsidiary structure would have avoided the additional costs of preparing their own financial statements, but at the cost of first analyzing whether the corporate structure was simple or complex for purposes of triggering the requirement and potentially needing to justify that analysis to the Commission. Additionally, DCOs may incur minimal costs to prepare a reconciliation of their balance sheet when material differences exist as compared to the DCO's financial statement for the last quarter of the fiscal year.

Had the Commission adopted LCH's suggestion that non-U.S. DCOs be allowed to submit financial reports using currencies other than the U.S. dollar, such DCOs may have experienced reduced costs in preparing their financial reports, but the Commission believes that staff will be better able to protect the financial integrity of markets if it has all financial reports in U.S. dollars. Adopting LCH's suggestion would have required Commission staff to convert such currencies to U.S. dollars to complete its analysis, which would have required staff to make decisions about exchange rates. This, in turn, could have led to staff determining that the DCO failed to comply with one or more

financial resources requirements even if a reasonable exchange rate used by the DCO would have demonstrated compliance with such requirements. Such a determination could potentially cost the DCO in terms of the time and effort to address staff's determination and potentially taking remedial action for failing to comply with requirements.

The Commission is revising § 39.11(f)(3) to clarify that a DCO must send the documentation to the Commission required under paragraphs (i)(A) and (i)(B) of that section only upon the DCO's first submission under § 39.11(f)(1) and in the event of any change thereafter. Not requiring that this documentation be prepared and sent to the Commission every quarter may reduce DCOs' reporting costs.

LCH also suggested defining "material" for the purposes of annual reporting requirements as 10 percent of either the (1) six-month liquidity test, or (2) 12-month capital cost-based financial resources test. The Commission believes that DCOs should retain discretion to define "material" for these purposes and therefore declines to include this suggestion. Providing DCOs with additional discretion should not impose significant costs on DCOs.

The Commission believes DCOs may incur additional costs associated with complying with the certification requirements in § 39.11(f)(4). These costs may be reduced for DCOs that already provide them. The Commission recognizes that a DCO may have to develop a process in certifying its financial reports; however, the Commission believes that these costs may be reduced for DCOs to the extent that they already have this process in place.[68]

[68] *See* 17 CFR 228, 229, 232, 240, 249, 270 and 274.

The Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) of the CEA, the Commission believes that the amendments to § 39.11 will result in improved protections for market participants and the public. Specifically, the adjustments to the methodology used to calculate a DCO's financial resources requirement in § 39.11(c) and the corresponding improvements to a DCO's stress testing results are expected to enhance the safety and soundness of DCOs and their ability to manage their risks, thereby better protecting DCOs' clearing members and their customers, market participants, and the public. Additionally, in further consideration of section 15(a)(2)(A) of the CEA, the proposal to require in § 39.11(f)(1)(ii) the financial statement of the DCO and not that of its parent company, is expected to better and more accurately assess the financial strength of the DCO, which will ultimately serve to protect market participants and the public and further the financial integrity of derivatives markets. In consideration of section 15(a)(2)(B) of the CEA, the Commission believes that, to the extent that the amendments to § 39.11 will result in increased clarity or transparency, those changes are anticipated to result in an incremental increase in efficiency. In consideration of section 15(a)(2)(D) of the CEA, the Commission believes the adjustments to the methodology used to calculate a DCO's financial resources requirement in § 39.11(c) would focus a DCO's analysis on the resources that would actually be available to it during times of stress, thereby improving the DCO's risk management practices. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

SIFMA AMG stated that DCOs should not be permitted to count unfunded assessments towards resources available to the DCO pursuant to current § 39.11(b)(1)(v), which is being renumbered § 39.11(b)(1)(iv). Similarly, FIA and ISDA requested that the Commission amend § 39.11(d)(2) to prohibit the use of assessments because assessments are unfunded resources. In contrast, ICE suggested that the Commission clarify that in applying the 20 percent limitation on the use of assessments per proposed § 39.11(d)(2), the calculation should be based on the exposure prior to netting against initial margin. The Commission may consider these suggestions in future proposals.

11. Participant and Product Eligibility – § 39.12

Regulation 39.12(b)(2) provides that a DCO shall adopt rules providing that all swaps with the same terms and conditions are economically equivalent within the DCO. As it was not the intention of the Commission to require DCOs that do not clear swaps to adopt the rules required under this provision, the Commission is revising § 39.12(b)(2) so that it explicitly applies only to DCOs that clear swaps.

The Commission did not receive any comments on the benefits or costs associated with the changes to § 39.12.

Amendments to § 39.12 would reduce rulebook drafting costs for future DCO applicants that do not intend to accept swaps for clearing.

The Commission believes the amendments to § 39.12 would not impose costs on DCOs or swaps market participants, as they would not be clearing swaps through a DCO that does not accept swaps for clearing.

The Commission has considered the section 15(a) factors and believes that they are not implicated by these amendments.

12. Risk Management – § 39.13

Regulation 39.13(b) requires a DCO to establish and maintain written policies, procedures, and controls, approved by its board of directors, which establish an appropriate risk management framework. The introductory heading to this provision states that it is a "[d]ocumentation requirement." The Commission is replacing "[d]ocumentation requirement" with "[r]isk management framework" and replacing the words "establish and maintain" with "have and implement." This has the benefit of making clear the existing requirement that a DCO is not only required to have a documented risk management framework but to put it into action. The Commission did not receive any comments on these changes. The Commission does not believe the amendments will impose any additional costs on DCOs, as it simply clarifies the existing requirement.

Regulation 39.13(f) requires a DCO to limit its exposure to potential losses from clearing member defaults to "ensure" that the DCO's operations would not be disrupted and non-defaulting clearing members would not be exposed to unanticipated or uncontrollable losses. Recognizing that a DCO cannot ensure protection from that which it cannot anticipate, the Commission is amending § 39.13(f) by replacing "ensure" with "reasonably designed to ensure," as suggested by commenters.

Specifically, FIA and ISDA requested that the Commission retain the original language because they stated that changing "ensure" to "minimize the risk" would increase the potential for non-defaulting clearing members to be exposed to uncapped liability. FIA and ISDA suggested revising the language to require that "[a] derivatives clearing organization shall limit its exposure to potential losses from defaults by clearing

members through margin requirements and other risk control mechanisms reasonably designed to ensure that…."

The Commission notes that the change in § 39.13(f) clarifies, but does not alter a DCO's existing obligations under this provision. Therefore, the Commission believes that the amendments will not impose any additional costs on DCOs and will facilitate DCOs' compliance with the rule.

Regulation 39.13(g)(2)(i) requires that a DCO have initial margin requirements that are commensurate with the risks of each product and portfolio, including any unusual characteristics of, or risks associated with, particular products or portfolios. The regulation currently notes that such risks include but are not limited to jump-to-default risk or similar jump risk. The Commission proposed to amend § 39.13(g)(2)(i) to note that such risks also include "concentration of positions."

The Commission is amending § 39.13(g)(2)(i) to delete the existing requirement that such risks "includ[e] but are not limited to jump-to-default risk or similar jump risk," and to remove the proposed reference to "concentration of positions." The Commission is concerned that including and adding to a list of examples of types of risks might be interpreted to mean that a DCO does not have to consider risks not mentioned. The Commission reiterates that a DCO should consider a range of risks, including, for example, jump-to-default risk, concentration risk, correlation risk, and other risks associated with the particular products and portfolios it clears. The Commission notes that, by not enumerating the risks that should be considered, DCOs are given greater discretion with respect to how they identify, label, and address such risks. The Commission believes that this flexibility will benefit DCOs in complying with this

provision, and notes that this change clarifies, but does not alter a DCO's existing obligations under this provision. Therefore, the Commission does not believe the amendments will impose additional costs on DCOs. To the extent that § 39.13(g)(2)(i) no longer includes a list of types of risks to be considered, a DCO may incur higher costs in accurately determining the types of risks that should be considered. The Commission did not receive comments on the costs associated with these amendments.

Regulation 39.13(g)(3) requires a DCO to have its systems for initial margin requirements reviewed and validated by a qualified and independent party on a regular basis. The Commission is revising this regulation to change "on a regular basis" to "an annual basis." Additionally, § 39.13(g)(3) provides that an employee of the DCO may conduct such independent validations as long as they are not responsible for the development or operation of the systems and models being tested. The Commission is amending § 39.13(g)(3) to expand the pool of eligible employees to include employees of an affiliate of the DCO, which will provide DCOs with greater flexibility in selecting appropriate staff to conduct the validations. In addition, in response to commenters' suggestions, the Commission is amending § 39.13(g)(3) to specify that, where no material changes to the margin model have occurred, previous validations can be reviewed and affirmed as part of the annual review process.

The Commission believes that this amendment will benefit DCOs by providing greater flexibility and reducing their costs in obtaining an independent validation, while maintaining the independence of the validation and not otherwise reducing the benefits associated with the independent validation.

ICE expressed support for permitting employees of an affiliate of the DCO to conduct initial margin model validations. FIA and ISDA, however, requested that the Commission withdraw this proposal and instead require in a re-proposed rule that a qualified and independent third party conduct the validations. FIA and ISDA stated that employees that validate an initial margin model used by more than one affiliated DCO may not independently analyze whether the same model is appropriate for different products cleared by the affiliated DCOs. FIA and ISDA also noted that, to the extent that the inherent conflict of interest in model validation results in a compromised margin model, there will be costs to the clearing members, as well as the markets. The Commission believes it is appropriate to permit a DCO's employees or employees of an affiliate of the DCO to conduct the validations, provided they are not responsible for development or operation of the systems and models being tested (as required under § 39.13(g)(3)). Since § 39.13(g)(3) has been in place, the Commission has not encountered any issues with employees of a DCO conducting the validations; therefore, the Commission believes it is appropriate to permit employees of an affiliate of the DCO to conduct the validations. Having a third party conduct the validations may be more costly than having a DCO's employees or employees of an affiliate of the DCO conduct the validations.

Nodal commented that if the proposal requires annual validations of theoretical models, it would place an undue burden on certain DCOs due to the significant cost and time that would be involved in obtaining an independent validation for models that do not change from year-to-year. In response to Nodal's comment and similar suggestions by CME, FIA, and ISDA, the Commission is specifying in the final rule that where no

material changes to the margin model have occurred, previous validations can be reviewed and affirmed as part of the annual review process. The Commission believes that this modification addresses Nodal's concerns about costs while ensuring the benefits of requiring DCOs to validate their margin models on an annual basis.

To be consistent with terminology used in other Commission regulations, the Commission in § 39.13(g)(4) is substituting the phrase "conceptual basis" for the phrase "theoretical basis" in the discussion of spread margin. The Commission received one comment in support of the proposed change, but did not otherwise receive comments on the costs associated with the change. The Commission does not believe the amendment will impose additional costs on DCOs, as it simply clarifies the existing requirement and does not alter the meaning of the rule.

The Commission is adopting new § 39.13(g)(7)(iii) to clarify that, in conducting back tests of initial margin requirements, a DCO should compare portfolio losses only to those components of initial margin that capture changes in market risk factors. This change is expected to ensure that back testing of a DCO's initial margin model is more appropriately calibrated.

The Commission did not receive any comments on the costs associated with the proposal. Commenters disagreed with which elements should be included when back testing initial margin requirements. ICE commented that all margin model charges and add-ons should be included, whereas SIFMA AMG supported the proposal, stating that margin add-ons should not be included when back testing. The Commission considered the costs and benefits between these two alternatives. The Commission believes that DCOs and the markets they serve benefit from accurate back testing, as it helps to ensure

that a DCO has collected sufficient margin to meet its coverage requirement, and that comparing portfolio losses only to components of initial margin that capture changes in market risk factors reduces the likelihood of misrepresenting the actual margin coverage produced by a DCO's models, as the inclusion of other components may result in margin breaches going undetected. Moreover, the Commission notes that back testing without charges and add-ons is also easier and more time- and cost-effective.

Regulation 39.13(g)(8)(i) requires a DCO to collect initial margin on a gross basis for each clearing member's customer account(s). The Commission is amending § 39.13(g)(8)(i) to permit a DCO to collect customer initial margin from its clearing members on a gross basis only during its end-of-day settlement cycle. The Commission did not receive any comments on the costs associated with the proposal, and does not believe the amendments would impose any additional costs on DCOs. The Commission believes that DCOs will benefit from the amendment because it clarifies when a DCO is required to collect customer initial margin, and it provides DCOs with more flexibility in meeting the requirements in light of the operational issues that may arise intraday.

The Commission is adopting amendments to § 39.13(g)(8)(i)(B) to require a DCO to have rules that require its clearing members to provide reports to the DCO each day setting forth end-of-day gross positions of each individual customer account within each customer origin of the clearing member. In response to an industry comment about the burden of DCOs maintaining customer-level records, the final rule requires that the daily reports specify positions of "each individual customer account" instead of "each beneficial owner," as originally proposed. In addition, the Commission is clarifying that

a DCO shall have rules that require only its clearing members to provide the specified reports to the DCO.

The Commission received two comments on the costs and benefits associated with the proposed amendments. ICE noted the benefit of additional transparency associated with reporting customer-level information, but asked that the Commission consider the costs to clearing members and DCOs of developing new operational systems and procedures that the proposal would necessitate, and consider ways to phase in any new requirements to allow for the necessary development of new operational systems and procedures, at both the DCO and clearing member levels. OCC stated that the proposal would introduce a significant shift in the burden to maintain customer-level records from FCMs and introducing brokers to a DCO. OCC also questioned the benefits of the proposal, stating that, because virtually every FCM clears through multiple DCOs, requiring a DCO to collect and report customer-level information to the Commission does not in fact allow the Commission to appropriately understand the risks associated with individual customers without further aggregating the data that various DCOs receive from an individual FCM. OCC represented that it and its clearing members would need to make significant operational changes to obtain this information and report it daily, and OCC would need to make corresponding rule changes.

The Commission believes that these changes provide additional transparency, as identified by ICE, and the Commission has further modified § 39.13(g)(8)(i)(B) to address the costs identified in the comments received by the Commission.

Regulation 39.13(g)(8)(ii) provides that a DCO must require its clearing members to collect customer initial margin from their customers, for non-hedge positions, at a level

that is greater than 100 percent of the DCO's initial margin requirements with respect to each product and swap portfolio. Consistent with the Division of Clearing and Risk's 2012 interpretation on customer margining, the Commission is adopting revisions to § 39.13(g)(8)(ii) to permit DCOs to continue the practice of establishing customer initial margin requirements based on the type of customer account and by applying prudential standards that result in FCMs collecting customer initial margin at levels commensurate with the risk presented by each customer account. The Commission is also adopting additional clarifying revisions to state that the DCO shall have reasonable discretion in determining clearing initial margin requirements for products or portfolios and whether and by how much customer initial margin requirements for categories of customers determined to have heightened risk profiles by their clearing members must exceed, at a minimum, the DCO's clearing initial margin requirements by a standardized amount, because the Commission believes that this better articulates the DCO's obligations. The Commission further confirms that the changes to § 39.13(g)(8)(ii) are not intended to shift the burden of determining the appropriate level of additional customer margin from clearing members to the DCO, but instead, are intended to clarify existing requirements. To the extent that the changes clarify existing requirements, the Commission believes that it will not impose additional costs on DCOs, but that DCOs will benefit from regulatory clarity.

OCC and ICE supported the proposed changes to § 39.13(g)(8)(ii), noting that DCOs will benefit from additional discretion in determining the percentage by which customer initial margin requirements must exceed the DCO's clearing initial margin requirements. CME supported codification of the 2012 interpretation on customer

margining, but was concerned that the proposed changes to § 39.13(g)(8)(ii) would shift the burden of determining the appropriate level of additional customer margin from FCM clearing members to DCOs, and proposed edits to address the issue. FIA and ISDA commented that the proposed change to customer initial margin requirements may impose an operationally impractical regime for clearing members to collect initial margin from customers.

Regulation 39.13(g)(12) requires a DCO to apply appropriate reductions in value to reflect credit, market, and liquidity risks (haircuts), to the assets that it accepts in satisfaction of initial margin obligations. This provision also requires a DCO to evaluate the appropriateness of the haircuts "on at least a quarterly basis." Regulation 39.11(d)(1) requires that haircuts be evaluated on a monthly basis for assets that are used to meet the DCO's financial resources obligations set forth in § 39.11(a). The Commission is adopting amendments to § 39.13(g)(12) to align it with § 39.11(d)(1) by requiring that DCOs evaluate the appropriateness of the haircuts that they apply to assets accepted in satisfaction of initial margin obligations on a monthly basis.

While LCH questioned the benefit of the proposal, suggesting that haircuts may not significantly change on a monthly basis, FIA and ISDA disagreed, noting that the value of assets held for initial margin can change frequently. In addition, the changes will align the § 39.13(g)(12) requirement with the § 39.11(d)(1) standard that DCOs are required to use to meet their financial resources obligations. The Commission believes that this harmonization will reduce the cost of regulatory compliance and that DCOs will benefit from an enhanced ability to risk manage with more frequently calibrated haircuts.

Regulation 39.13(h)(1)(i) requires a DCO to impose risk limits on each clearing member, by house origin and by each customer origin, in order to prevent a clearing member from carrying positions for which the risk exposure exceeds a specified threshold relative to the clearing member's and/or the DCO's financial resources. The Commission proposed to clarify that such risk limits should also be imposed to address positions that may be difficult to liquidate.

The Commission has determined not to adopt the proposed changes to § 39.13(h)(1) at this time, but will continue to consider this issue further. The Commission remains concerned about positions that may be difficult to liquidate, particularly concentrated positions. However, the Commission believes that DCOs should address difficult–to-liquidate positions using the DCO's margin methodology and consider whether and what other measures may be appropriate. The comments received from OCC, FIA, ISDA, and LCH in this regard have contributed to the Commission's decision.

Regulation 39.13(h)(5)(ii) requires a DCO to, on a periodic basis, review the risk management policies, procedures, and practices of each of its clearing members, which address the risks that such clearing members may pose to the DCO, and to document such reviews. The Commission is adopting an amendment to § 39.13(h)(5)(ii) to clarify that DCOs should, having conducted such reviews, take appropriate actions to address concerns identified in such reviews, and that the documentation of the reviews should include the basis for determining what action was appropriate to take.

The Commission did not receive any comments on the costs associated with the proposed amendments. However, ICE, FIA, and ISDA questioned the benefits of the

rule, while LCH supported the change. FIA and ISDA stated that the proposal is unnecessary, and ICE suggested that such supervision should instead be conducted at the DSRO level.

The Commission believes that there may be incremental costs associated with requiring DCOs to address concerns identified in reviews of their clearing members' risk management policies. In response to ICE's suggestion that clearing member risk reviews should be conducted by a DSRO, the Commission notes that not all clearing members are subject to the supervision of a DSRO. Finally, the Commission disagrees with FIA and ISDA's comment that the proposed amendments are unnecessary. As the Commission stated in the Proposal, absent such follow-up, the reviews would lack purpose.

The Commission is codifying its existing practices for evaluating cross-margining programs in new § 39.13(i), which requires a DCO that seeks to implement or modify a cross-margining program with one or more other clearing organizations to submit rules for Commission approval pursuant to § 40.5. However, the Commission is not adopting the proposed requirement that a DCO provide, at a minimum, specific information needed to facilitate the Commission's review of the rule filing. Rather, the Commission is requiring that a DCO submit information sufficient for the Commission to understand the risks that would be posed by the program and the means by which the DCO would address and mitigate those risks. The Commission believes that leaving it to the discretion of the DCO to determine what information to provide, yet giving the Commission the ability to request any additional information it may need to conduct its review of a cross-margining program, is appropriate given that cross-margining programs

can vary greatly, depending on the products, participants, and clearing organizations involved.

The Commission received comments on the costs and benefits associated with the proposed amendments from OCC, FIA, and ISDA. OCC opposed the proposal to require a DCO to provide specific types of information, arguing that it would reduce the Commission's flexibility to determine what types of information are necessary for it to review in specific circumstances. OCC suggested that a DCO should not be required to provide each of the specified types of information when it is requesting the Commission's approval to update an existing cross-margining program, where analyzing factors unrelated to the change for which it is requesting approval would create an unnecessary burden. OCC suggested that instead the Commission should issue guidance on what information it may require in its review of a cross-margining program. OCC further requested that, should the Commission nonetheless choose to require specific types of information in proposed § 39.13(i), the information should only be required when the Commission reviews a new cross-margining program and not when the Commission reviews changes to an existing cross-margining program. OCC also suggested that DCOs should be able to submit a cross-margining program under either § 40.5 or § 40.6(a), and requested that the Commission only apply the § 40.5 review process to a new cross-margining program.

FIA and ISDA recommended that the Commission consider including in its evaluation the credit and liquidity risk management, and settlement and default management-related principles identified in the PFMIs to increase transparency and improve the ability of clearing members to manage the risks associated with positions

subject to cross-margining. Because the Commission did not propose this requirement, it cannot adopt it at this time but may consider it in conjunction with a future rulemaking.

In response to OCC's comment about the costs associated with DCOs including specified information in a § 40.5 in this regard, the Commission is modifying the rule text to remove the specific information that should be included, but is retaining the rule text stating that the Commission may request additional information in support of a rule submission filed under § 39.13(i), and may approve such rules in accordance with § 40.5. The Commission is declining to take OCC's recommendation to include the specified information as guidance. The Commission believes that the information that a DCO should submit is dependent on the facts and circumstances and that the specified information as proposed may be inadequate. The Commission also acknowledges OCC's observation that some of the specified information may not be necessary in some situations. Were the Commission to adopt instead OCC's suggestion to include the specified information as guidance, DCOs might rely upon the guidance to their detriment and incur costs associated with preparing unnecessary information to include in their request for approval under § 40.5. The Commission is also declining to permit DCOs to submit cross-margining programs or modifications to cross-margining programs under § 40.6. Because cross-margining programs involve two or more clearing organizations' rules and operations, they are too complex to be evaluated within the 10 business days provided under § 40.6, which is why they historically required approval by the Commission. The Commission also believes that a rule submission for an existing cross-margining program can raise as many issues as a rule for a new cross-margining program. Had the Commission adopted OCC's suggestion to permit DCOs to file under § 40.6,

DCOs would not have experienced any increase in costs. However, the Commission believes that the approval process provides some assurance to market participants that a DCO is adequately managing its risks with a cross-margining program. The Commission also believes that the § 40.5 process would not necessarily place additional costs on DCOs due to the longer review period. The Commission may expedite a § 40.5 review period and, in contrast, may stay a § 40.6 self-certification for a 90-day period. For the reasons discussed above, the Commission is also declining to add the specified information FIA and ISDA suggested.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) of the CEA, the Commission believes that the amendments to § 39.13 will aid in the protection of market participants and the public by enhancing certain risk management requirements of DCOs. For example, amendments to § 39.13(g)(12) will require DCOs to increase the frequency by which they evaluate the appropriateness of haircuts that they apply to initial margin collateral. Given that initial margin is held for risk management purposes, assessing haircuts more frequently would enhance a DCO's ability to manage its risks. In addition, the amendments to § 39.13 will help preserve the efficiency and financial integrity of the derivatives markets by enhancing certain risk management requirements of DCOs. For example, the amendments to § 39.13(g)(7)(iii), which clarify that in conducting back tests of initial margin requirements, a DCO should compare portfolio losses only to those components of initial margin that capture changes in market risk factors, may help to ensure that a DCO can more accurately confirm that it is collecting sufficient margin to meet its

coverage requirements. The Commission also believes that the amendments to § 39.13 will strengthen and promote sound risk management practices across DCOs, their clearing members, and clearing members' customers. Specifically, the amendments enhance, clarify, and provide flexibility in complying with several DCO risk management requirements, which will aid DCOs in efficiently allocating their risk management attention and resources. Finally, in consideration of section 15(a)(2)(E) of the CEA, the Commission notes the public interest in promoting and protecting public confidence in the safety and security of the financial markets. DCOs are essential to risk management in the financial markets, both systemically and on an individual firm level. The amendments, by enhancing, clarifying, and providing flexibility beyond current requirements, promote the ability of DCOs to perform these risk management functions. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

13. Treatment of Funds – § 39.15

The Commission is amending § 39.15(b)(1) to clarify that "funds and assets" are equivalent to "money, securities, and property," to better align the language of § 39.15(b)(1) with the language in the CEA. Furthermore, § 39.15(b)(2)(ii) requires a DCO to file a petition for an order pursuant to section 4d(a) of the CEA in order for the DCO and its clearing members to commingle customer positions in futures, options, and swaps in a futures customer account subject to section 4d(a) of the CEA.

The Commission is amending § 39.15(b)(2)(ii) to permit a DCO to file rules for Commission approval pursuant to § 40.5 in order for the DCO and its clearing members to commingle such positions. This better aligns the requirements of § 39.15(b)(2)(ii)

with § 39.15(b)(2)(i), which requires a DCO that wants to commingle futures, options, and swaps in a cleared swaps customer account to file rules for Commission approval.

Regulation 39.15(d) requires a DCO to have rules providing for the prompt transfer of all or a portion of a customer's portfolio of positions and related funds at the same time from the carrying clearing member to another clearing member, without requiring the close-out and re-booking of the positions prior to the requested transfer. Based on feedback received from DCOs, the Commission is amending § 39.15(d) to delete the words "at the same time," thus requiring the "prompt," but not necessarily simultaneous, transfer of a customer's positions and related funds. The Commission is further amending this provision to require the transfer of related funds "as necessary," recognizing that the transfer of customer positions will not always require the transfer of funds.

The Commission is amending § 39.15(e), which relates to permitted investments of customer funds, to clarify that the regulation applies to any investment of customer funds or assets, including cleared swaps customer collateral, as defined in § 22.1. At the time § 39.15(e) was adopted, the Commission had not yet adopted regulations concerning cleared swaps customer funds but intended for § 39.15(e) to also apply to those funds. This change ensures that cleared swaps customer collateral will receive the same safekeeping as other funds and assets invested by DCOs and would reflect the Commission's intent.

The Commission did not receive any comments on the costs and benefits of the proposed changes.

This approach will reduce the burden on DCOs while providing the Commission with sufficient means to determine whether the customer funds will be adequately protected. The Commission believes the amendments to § 39.15(b)(2)(ii) will streamline the procedures for a request to commingle customer funds. As discussed above, the amendment may potentially reduce costs for DCOs that would otherwise have to petition the Commission for an order providing relief from section 4d of the CEA in order to commingle such customer funds.

Amendments to § 39.15(d) were meant to reflect common practice and provide greater flexibility to DCOs in transferring positions and funds. The Commission also notes that simultaneous transfer of funds may not be possible when a third party is involved, hence bringing further clarification to the rule. Amendments to § 39.15(e) also benefits customers as, under the new rules, their collateral will receive the same safekeeping as other funds and assets invested by DCOs.

The Commission expects costs related to amendments to § 39.15 to be de minimis. To the extent that amendments to § 39.15(b)(2)(ii), which requires a DCO to file rules for Commission approval pursuant to § 40.5, is more costly than what DCOs are currently required to file, there might be additional costs to DCOs. The Commission does not believe these additional costs will be significant.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) of the CEA, the Commission believes that the amendments to § 39.15 will aid in the protection of market participants and the public, specifically customers of clearing members, by providing clarity on several requirements

related to the treatment of customer funds, including with respect to the transfer of customer positions and funds under § 39.15(d). The Commission notes that amendments to § 39.15(e) also make sure that customers' collateral will receive the same safekeeping as other funds and assets invested by DCOs, again furthering protection of market participants and the public. Moreover, the amendments will promote efficiency in the derivatives markets by streamlining the procedures for a request to commingle customer funds, as DCOs will be able to file rules for Commission approval whether requesting to commingle customer funds in a futures or cleared swaps customer account. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

14. Default Rules and Procedures – § 39.16

The Commission is amending § 39.16(b) to require a DCO to include clearing members and participants in an annual test of its default management plan to the extent the plan relies on their participation. Although the Commission did not receive comments specifically addressing the costs or benefits associated with these amendments, commenters generally suggested that DCOs should be given greater flexibility and discretion in the extent to which clearing members participate in tests of a DCO's default management plan. As a result, the Commission is modifying the language in the final regulation to require participation of clearing members and participants to add the phrase "to the extent the plan relies on their participation." This change is intended to provide greater flexibility to DCOs while promoting participation in testing and ensuring that clearing members and participants are prepared in the event of a default. To comply with this requirement, a DCO may incur costs to coordinate clearing members' participation.

However, the Commission believes that many DCOs already involve clearing members in their tests as a matter of best practice. The Commission believes that greater flexibility in this regard would have no detrimental impact on the benefits anticipated from, and may alleviate some of the costs associated with, clearing member participation in testing of a DCO's default management plan.

The Commission has determined not to finalize at this time a proposal to amend § 39.16(c)(1) to require a DCO to establish a default committee, but may re-propose the rule in the future. The default committee would have been required to include clearing members and could have included other participants, and would be convened in the event of a default involving substantial or complex positions to help identify any market issues that the DCO is considering. Commenters' views were mixed, with several commenters opposing the proposal and others supporting it. Opposing comments noted costs associated with reduced efficiency of the default management process.

For example, CME believes the proposal to require a default committee and clearing member participation on that committee risks unnecessarily prolonging and overcomplicating the default management process. CME further indicated that the proposed requirements could trigger resource scarcity at clearing members precisely when trading expertise is most needed—*i.e.*, in a stress event surrounding a clearing member default. FIA and ISDA supported the proposal but recommended that clearing member participation on default management committees be voluntary (with the decision on whether to participate being left to each clearing member) rather than mandatory. Nodal commented that requiring a DCO to have a default committee that includes clearing members or other participants is not likely to assist in efficiently managing the

positions of the defaulting member; instead, it would add unnecessary complexity to what is already an efficient process. Nodal further believes that clearing members on a default committee could create the potential for conflicts for any clearing member or participant selected, as well as introduce an element of self-interest or potential gaming within the decision-making of the default procedure and response.

Mr. Saguato supported the proposal to have clearing member and customer participation on a DCO's default committee. Mr. Saguato suggested that the Commission explore the costs and benefits of further increasing and formalizing the role of clearing members and their customers in the default process, as Mr. Saguato believes clearing members should have a primary role in setting default procedures. In light of the strong divergence in the views expressed in the comments received, the Commission has determined to forego adopting the proposed changes to § 39.16(c)(1) at this time. The Commission wishes to give industry stakeholders holding these divergent views time to come closer to consensus on this issue.

As to Mr. Saguato's suggestion, the Commission will explore such costs and benefits if it moves forward with another proposed rulemaking on this issue. As to CME's comment that the proposal to require a default committee and clearing member participation on that committee risks unnecessarily prolonging and overcomplicating the default management process, the Commission notes that the proposed rule would have had the benefit of helping to ensure that clearing members and participants have input into the default management process and that the interests of clearing members and participants are considered in default management decisions.

Furthermore, the Commission is requiring in § 39.16(c)(2)(ii) that a DCO's default procedures include public notice on the DCO's website of a declaration of default. The Commission believes that such notice should occur as quickly as possible, taking into account the potential negative impact that it might have on the ability of the DCO to manage the default, but did not specify timing in the final rule. The Commission's proposal would have required immediate public notice of a default, but the Commission modified the proposal in light of comments in opposition to the requirement that such notice be immediate and suggestions by commenters that DCOs have flexibility in the manner and timing of these notices. Commenters did generally support providing public notice of a clearing member's default with that modification. For example, MGEX generally agreed that public notice of a default is vital for promoting the integrity and stability of financial markets; however, MGEX suggested that the Commission give DCOs some discretion with respect to the timing of posting such notice, which would allow DCOs to take into consideration the nature of the default and any circumstances warranting flexibility. CME believes mandatory immediate public notification runs the risk of causing disadvantageous pricing for liquidation or auctions, which could increase the costs to the DCO of managing the clearing member default, and if losses are incurred, could ultimately increase the risk of mutualizing losses among its clearing members. OCC, ICE, FIA, ISDA, Eurex, and Nodal indicated that immediate public notice could potentially impact the market and the DCO's ability to manage the default. Similarly, Mr. Saguato added that requiring immediate public notice of a declaration of default is unnecessary and potentially counterproductive to an effective default management process and should not be adopted as proposed.

The Commission believes that providing public notice of a default will help to promote the integrity and stability of financial markets at little cost to DCOs and will avoid the potential costs described by commenters associated with immediate public notice.

Lastly, § 39.16(c)(2)(iii)(C) requires any allocation of a defaulting clearing member's positions to be proportional to the size of the participating or accepting clearing member's positions in the same product class at the DCO. The Commission is amending this provision to clarify that a DCO may not require a clearing member to bid for a portion of, or accept an allocation of, the defaulting clearing member's positions that is not proportional to the size of the bidding or accepting clearing member's positions in the same product class at the DCO. The Commission did not receive comments on the costs or benefits of the proposed changes. The Commission did receive, however, comments that were opposed to the aspect of the proposed rule that would have required DCOs to use initial margin requirement as the basis for determining limits on potential bidding and allocation requirements. Therefore, the Commission is modifying the proposed change to not require the use of initial margin requirement as the metric in this regard. The final rule will ensure that clearing members have the flexibility, but not the requirement, to participate in auctions and allocations beyond the proportional size of their respective positions, while providing DCOs with discretion in measuring the size of clearing members' portfolios for purposes of determining limits on potential bidding and allocation requirements. The Commission has not identified any costs associated with this change.

As to the costs and benefits in light of the section 15(a) factors, in consideration of section 15(a)(2)(A) of the CEA, the Commission believes that the amendments to § 39.16(c)(2)(ii) to require that a DCO have default procedures that include public notice on the DCO's website of a declaration of default will aid in the protection of market participants and the public by ensuring public notice of a default. In further consideration of section 15(a)(2)(A) of the CEA, the Commission believes the amendments to § 39.16(c)(2)(iii)(C) regarding the allocation of a defaulting clearing member's positions will protect clearing members from involuntarily having to bid on or accept defaulting positions that are not in proportion to the size of their positions in the relevant product class, while also providing clearing members with the flexibility to voluntarily bid on or accept more than a proportional share of the defaulting positions if that clearing member has the ability to manage the risk of those new positions. In consideration of section 15(a)(2)(B) and (D) of the CEA, the Commission believes the amendments to § 39.16(b) support the financial integrity of the derivatives markets and promote sound risk management practices by requiring DCOs to have greater clearing member participation in a test of their default management plans to the extent appropriate and ensure that clearing members are permitted, but not required, to bid on or accept defaulting positions that are not in proportion to the size of their positions in the relevant product class. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

15. Rule Enforcement – § 39.17

Regulation 39.17(a) codifies Core Principle H, which requires a DCO to maintain adequate arrangements and resources for the effective monitoring and enforcement of

compliance with its rules and dispute resolution. The Commission is making a technical change to § 39.17(a)(1) to emphasize that a DCO is required to monitor and enforce compliance by both itself and its members with the DCO's rules. The Commission also is amending § 39.17(b), which permits a DCO's board of directors to delegate its responsibility for compliance with the requirements of § 39.17(a) to the DCO's risk management committee, to allow a DCO to delegate such responsibility to a committee other than the risk management committee. While ICE supported the proposed amendments, there were no comments related to the costs or benefits of these changes. The Commission is adopting the amendments as proposed.

The amendment to § 39.17(a)(1) will help clarify DCOs' responsibilities but is otherwise non-substantive, while the amendment to § 39.17(b) will allow DCOs more discretion in delegating the compliance function to the most appropriate committee.

The Commission does not believe the amendments to § 39.17(a)(1) or (b) will impose any additional costs on DCOs or their members because the changes are technical in nature.

ICE suggested that the Commission should consider permitting a DCO's board to broaden the delegation of this responsibility to the president of the DCO or an equivalent officer. The Commission declines to adopt ICE's suggestion at this time; the Commission may consider it in a future proposal where comment could be sought and the costs and benefits could be considered.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(D) of the CEA, the Commission believes that the

amendments to § 39.17 will promote sound risk management practices by emphasizing the importance of compliance with DCO rules and by providing DCOs with additional flexibility in structuring their governance arrangements. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

16. Reporting – § 39.19

Regulation 39.19 implements Core Principle J, which requires that each DCO provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the DCO. The Commission is adopting several amendments to § 39.19 to add new requirements, clarify certain existing requirements, and incorporate other changes to part 39 via updated cross-references and other technical amendments. The purpose of the amendments to § 39.19 is to assist DCOs by centralizing many of their ongoing reporting requirements into § 39.19, and by providing additional detail with respect to certain requirements. The Commission also is adopting additional reporting requirements to enhance Commission oversight of DCOs' compliance with the Core Principles and Commission regulations.

The amendments to § 39.19 may be divided into two groups to facilitate consideration of the costs and benefits associated with these changes. The first group of changes consists of the changes to § 39.19 that clarify existing reporting requirements and, in certain instances, incorporate into § 39.19 reporting requirements previously contained elsewhere within part 39. The Commission believes that the costs and benefits associated with this group of changes are minimal because, as noted above, these changes do not alter the substantive reporting obligations of DCOs. The second group of changes

consist of new requirements under the daily reporting requirements in § 39.19(c)(1)(i) and event-specific reporting requirements in § 39.19(c)(4).

The Commission is amending the daily reporting requirements of § 39.19(c)(1)(i)(A) through (C) to require that DCOs report margin, cash flow, and position information by individual customer account, in addition to the existing requirement that DCOs report this information by house origin and customer origin. The Commission also is amending § 39.19(c)(1)(i)(D) to require that, with respect to end-of-day position information, DCOs must report the positions themselves (*i.e.*, the long and short positions) as well as risk sensitivities and valuation data for these positions.[69] Lastly, the Commission is amending § 39.19(c)(1)(i)(D) to require DCOs to provide any legal entity identifiers and internally-generated identifiers associated with individual customer accounts, to the extent that the DCO possesses such information.

This information, individually and in aggregate, will assist the Commission in identifying customer positions across clearing members and DCOs. Analyzing positions at the customer level is a crucial element of an effective risk surveillance program, and incorporating risk sensitivities and valuation data into position information better informs Commission staff of the assumptions embedded in the position information. Identifying customers whose positions create the most risk to a DCO's clearing members assists the Commission in determining whether adequate measures are in place to address those risks and whether the Commission needs to take proactive steps to see that those risks are mitigated, thereby enhancing the protections afforded to the markets generally. The

[69] The Commission estimates for PRA purposes that there would be an increase in the burden incurred by DCOs, as discussed in section X.B.2 above.

Commission believes that enhancing the supervision of DCOs and clearing members, especially identifying and mitigating the risks that individual customers and clearing members may present to a single DCO or to multiple DCOs, will result in increased safety and soundness of the markets, which will benefit DCOs, clearing members, and market participants.

The Commission believes DCOs may incur costs associated with these amendments, although not substantial costs. Several commenters expressed concern regarding the burden associated with reporting this information. All of the concerns were of a general nature; no commenter provided quantification of the additional burdens that this requirement would impose. In fact, as noted above, DCOs already are reporting this information, subject to existing technological and operational limitations. In response to comments, the Commission modified the rule text to clarify that it is not requiring DCOs to calculate risk sensitivities or valuation data on behalf of the Commission, or to obtain legal entity identifiers from clearing members. Lastly, with respect to daily reporting requirements, as explained above, DCOs already report most of this information. Because staff guidance regarding the format and manner of this reporting is periodically updated, there may be costs associated with making technical changes to accommodate these updates. The Commission notes that any costs associated with complying with new or modified technical specifications for data intake would be borne by the DCOs irrespective of the amended daily reporting requirements.

The other set of new reporting requirements are the event-specific reporting requirements that the Commission is adding to § 39.19(c)(4), including: a decrease in liquidity resources in § 39.19(c)(4)(ii); a legal name change in § 39.19(c)(4)(xi); a change

in any liquidity funding arrangement in § 39.19(c)(4)(xiii); a change in settlement bank arrangements in § 39.19(c)(4)(xiv); a change in the DCO's fiscal year in § 39.19(c)(4)(xix); a change in the DCO's accounting firm in § 39.19(c)(4)(xx); major decisions of the DCO's board in § 39.19(c)(4)(xxi); and issues with a DCO's margin model in § 39.19(c)(4)(xxiii) or settlement bank in § 39.19(c)(4)(xv). The Commission believes it is important for it to be notified of these events due to their potential impact on a DCO's operations.

The Commission expects that the cost burden associated with the changes to the event-specific reporting requirements under § 39.19(c)(4) will not be substantial. First, the events that would trigger such reporting do not occur very often. Additionally, where reporting is required under § 39.19(c)(4), the level of detail a DCO is required to provide is limited to a brief notice with only the pertinent details of the incident or event. Although commenters expressed the view generally that the event-specific reporting requirements were unnecessarily burdensome, especially with regard to the anticipated frequency of certain reportable events, no commenter quantified any burdens associated with any of the new event-specific reporting requirements. Nevertheless, as explained above, the Commission modified several of the event-specific reporting requirements to address commenters' concerns. These modifications include, for example, limiting reporting of margin model issues to those that are "material," limiting instances that would require notification to the Commission regarding settlement bank arrangements, and extending the deadline to report changes to a DCOs independent accounting firm.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In

consideration of section 15(a)(2)(A) and (D) of the CEA, the Commission believes that the amendments to § 39.19 promote the protection of market participants and the public and contribute to sound risk management practices by providing the Commission with timely information that is critical to its risk surveillance efforts. Also, in consideration of section 15(a)(2)(D) of the CEA, the Commission believes that requiring DCOs to provide notice to the Commission of certain additional events under § 39.19, such as a decrease in liquidity resources, settlement bank issues, and margin model issues, could further incentivize DCOs to avoid those risks, or to mitigate them more effectively if they do occur. Additionally, event-specific reporting will enhance the Commission's ability to identify trends or changes in market conditions, whether within the operations of a particular DCO, across DCOs, or in the marketplace generally, and to develop an appropriate supervisory response. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

17. Public Information – § 39.21

The Commission is amending the public reporting requirements of § 39.21 to require that DCOs make each of the items of information listed in proposed § 39.21(c)[70] available separately on the DCO's website instead of merely including them in the DCO's rulebook. This would assist DCOs' current and prospective clearing members and the general public in locating the relevant information. Furthermore, § 39.21(c)(4)

[70] Regulation 39.21(c) requires a DCO to disclose publicly and to the Commission information concerning: (1) the terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO; (2) each clearing and other fee that the DCO charges its clearing members; (3) the margin-setting methodology; (4) the size and composition of the financial resource package available in the event of a clearing member default; (5) daily settlement prices, volume, and open interest for each contract, agreement, or transaction cleared or settled by the DCO; (6) the DCO's rules and procedures for defaults in accordance with § 39.16; and (7) any other matter that is relevant to participation in the clearing and settlement activities of the DCO.

requires a DCO to publicly disclose the size and composition of its financial resource package available in the event of a clearing member default. To address questions concerning how often this information must be updated, the Commission is amending § 39.21(c)(4) to clarify that it should be updated quarterly, consistent with § 39.11(f)(1)(i)(A), which requires a DCO to report this information to the Commission each fiscal quarter. This change will assist DCOs in complying with this requirement, while ensuring consistent and timely disclosure to the public. The Commission noted in the Proposal that because the proposed amendments to § 39.21 merely require a DCO to separately make public information that would otherwise be made public in its rulebook, the Commission anticipated any additional costs to DCOs would be minimal.

The Commission did not receive any comments on the costs of the amendments to § 39.21. One commenter, MGEX, recommended that the Commission explicitly acknowledge that a DCO's publication of its Quantitative Disclosure, which subpart C DCOs are already required by § 39.37 to make available each quarter, fulfills the requirement of § 39.21(c)(4). The Commission is adopting § 39.21(c)(4) and is not adopting MGEX's suggestion. The Commission believes that the cost of separately disclosing information on the DCO's financial resources in the event of a default is minimal.

The Commission believes that the amendments to § 39.21 will benefit market participants and the public by making sure that important information regarding DCOs' operations is up-to-date, complete and easily accessible.

The Commission believes costs associated with the amendments to § 39.21 to be minimal because the amendments require a DCO to separately make public information

that would otherwise be made public in its rulebook. The Commission also believes that the cost of separately disclosing information on the DCO's financial resources in the event of a default is minimal.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A), (B), and (D) of the CEA, the Commission believes that the amendments to § 39.21 would enhance existing protection of market participants and the public; promote the efficiency and financial integrity of the derivatives markets; and aid in sound risk management practices by ensuring that key public information about the DCO's operations is readily accessible, complete, and current. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

18. Governance Fitness Standards, Conflicts of Interest, and Composition of Governing Boards – §§ 39.24, 39.25, and 39.26

The Commission is removing § 39.32, which sets forth requirements for governance arrangements for SIDCOs and subpart C DCOs, and adopting new §§ 39.24, 39.25, and 39.26, which incorporates all of the requirements of § 39.32. Therefore, all DCOs, including SIDCOs and subpart C DCOs, are subject to the same governance fitness standards, conflict of interest requirements, and board composition requirements, which most DCOs already meet in order to be considered a QCCP. This gives DCOs clear direction on how to comply with Core Principles O, P, and Q,[71] the only DCO Core

[71] Core Principles O, P, and Q respectively address governance arrangements, conflicts of interest, and composition of governing boards.

Principles for which the Commission has yet to adopt implementing regulations. Further, consistent with Core Principle Q, new § 39.26 requires a DCO's governing board or board-level committee to include market participants. The Commission is specifying that market participants' inclusion is required on the DCO's governing board or governing committee, *i.e.*, the group with the ultimate decision-making authority. This avoids ambiguity and provides DCOs with greater clarity.

CME commented that it has benefited from having a board of directors, oversight committee, and risk committees consisting of a variety of market participants with differing views and expertise. CME also appreciated the Commission taking a principles-based approach by allowing each DCO to determine the best representation of market participants for its governing board or committee for its risk management governance purposes, while also allowing each DCO to continue to comply with relevant state and securities laws. Mr. Barnard said the governance standards in §§ 39.24, 39.25, and 39.26 will enhance risk management and governance, thus further improving the protection for market participants and the public. Mr. Saguato agreed with the benefits of a multi-stakeholder representation at the board level of a DCO and a more direct engagement of market participants in the governance and supervision of DCOs.

Incorporating the requirements of § 39.32 to new §§ 39.24, 39.25, and 39.26 ensures that all DCOs, including SIDCOs and subpart C DCOs, will be subject to the same governance fitness standards, conflict of interest requirements, and board composition requirements. To the extent some DCOs were not already meeting these standards, this change benefits markets and market participants by improving the governance fitness standards and avoiding conflicts of interest for DCOs operating in

those markets. This change also benefits DCOs by giving them clear direction on how to comply with Core Principles O, P, and Q. Furthermore, § 39.26 will require that a DCO's governing board or committee include market participants, which will benefit DCOs and markets by enhancing risk management and governance decisions through inclusion of various stakeholders in a DCO's governing board or governing committee.

The Commission believes that DCOs may incur costs to comply with the requirements in §§ 39.24, 39.25, and 39.26, to the extent they are not already doing so. However, the Commission notes that some DCOs must already comply with these standards and will not face incremental costs. The Commission further believes that non-U.S. DCOs that are neither SIDCOs nor subpart C DCOs are generally held to similar requirements by their home country regulators and would also not incur additional costs.

As an alternative, ICE suggested that DCOs should have the flexibility to consider the means for providing market participant representation best suited to its business. Nadex commented that fully collateralized, non-intermediated DCOs should be exempt from compliance with proposed §§ 39.24 and 39.26 as the solicitation of retail individuals, like those of Nadex's market participants, would not likely provide significant value as compared with the burden and cost of reviewing such responses and could hinder the efficient operation of Nadex's board. Nadex noted that its market participants are not industry professionals, are not familiar with the DCO's internal operations in the same way that FCMs and other sophisticated members are familiar with "traditional" DCOs' business and operations, do not have an ownership interest or financial stake in the DCO or its default waterfall, and therefore, are not as substantially involved in the DCO's governance.

The Commission has considered the alternative suggested by commenters and notes that the requirement to include market participants on a DCO's governing board or committee is a statutory requirement under Core Principle Q. Additionally, the Commission believes that the alternatives suggested by commenters could permit a DCO to create a lower-level committee that does not have the same decision-making authority as its board or board-level committee, which would weaken the benefits described herein.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. Although the Commission believes that most, if not all, DCOs already comply with these requirements, to the extent they do not, the Commission believes the adoption of §§ 39.24, 39.25, and 39.26 would improve DCO risk management practices by promoting transparency of governance arrangements and making sure that the interests of a DCO's clearing members and, where relevant, their customers are taken into account. This would further enhance the protection of market participants and the public and the financial integrity of the derivatives markets. The Commission also believes that the required inclusion of market participants will enhance a DCO's sound risk management practices, as the inclusion of the DCO's market participants could provide a DCO's board of directors or board-level committee with additional derivatives product knowledge and risk management expertise. The Commission further believes that this amendment would benefit market participants, as well as improve the integrity of financial markets, by mitigating any potential conflict of interest that could arise if a DCO's board of directors or board-level committee is composed solely of DCO executives. The Commission acknowledges that DCOs that are not already complying with these requirements might

incur additional costs to do so, but the Commission expects that this includes only a few DCOs.

19. Legal Risk – § 39.27

The Commission is amending § 39.27(c) to require a DCO that provides clearing services outside the United States to ensure that the memorandum required in Exhibit R of Form DCO remains accurate and up-to-date. This will ensure that the DCO remains aware of any potential choice of law issues that may impact the enforceability of the DCO's rules, procedures, and contracts in all relevant jurisdictions. The Commission did not receive any comments related to the costs or benefits of amendments to § 39.27(c).

The Commission believes that amendments to § 39.27(c) will benefit the integrity of derivatives markets by making sure that the DCO remains aware of any potential choice of law issues that may impact the enforceability of the DCO's rules, procedures, and contracts in all relevant jurisdictions.

The Commission believes this requirement will not impose additional costs on DCOs that already maintain compliance with § 39.27(c), as DCOs with prudent risk management practices should continuously assess their rules, procedures, and policies against the laws and regulations of the jurisdictions in which they operate.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. The Commission believes that the amendments to § 39.27(c) will improve the integrity of derivatives markets while not imposing any additional costs.

20. Provisions Applicable to SIDCOs and DCOs that Elect to be Subject to the Provisions – §§ 39.33, 39.36, 39.37, and Subpart C Election Form

a. Financial Resources for SIDCOs and Subpart C DCOs – § 39.33

Regulation 39.33(a)(1) requires a SIDCO or a subpart C DCO that is systemically important in multiple jurisdictions, or that is involved in activities with a more complex risk profile, to maintain financial resources sufficient to enable it to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined loss in extreme but plausible market conditions. The Commission is amending § 39.33(a)(1) by replacing the phrase "largest combined loss" with "largest combined financial exposure" in order to be consistent with Core Principle B and § 39.11(a)(1) regarding DCO financial resources requirements. The Commission is also amending § 39.33(c)(1) to clarify that the "largest aggregate liquidity obligation" means the total amount of cash, in each relevant currency, that the defaulted clearing member would be required to pay to the DCO.

Furthermore, the Commission is amending § 39.33(d) to require that a SIDCO use available Federal Reserve Bank accounts and services where practical. This requirement would further enhance a SIDCO's financial integrity and management of liquidity risk, thereby promoting the financial integrity of the derivatives markets, while permitting SIDCOs to consider lower cost alternatives where appropriate.

The Commission did not receive any comments on the costs or benefits associated with these changes.

The Commission believes that the amendment to § 39.33(a)(1) makes the requirement more consistent with Core Principle B and § 39.11(a)(1) regarding DCO

financial resources requirements and benefits DCOs by bringing added uniformity and clarification. Furthermore, the Commission believes the changes to § 39.33(c)(1) will reduce currency risk for SIDCOs and subpart C DCOs by ensuring that these DCOs have sufficient liquidity in the relevant currency of corresponding obligations during the time it would take to liquidate or auction a defaulted clearing member's positions. This requirement improves the financial stability of markets. Additionally, amendments to § 39.33(d) will also enhance the financial integrity of derivatives markets and reduce potential costs for SIDCOs by allowing them to use lower cost alternatives if practical.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(D) of the CEA, the Commission believes the amendments to § 39.33(c)(1) will promote sound risk management policies by reducing currency risk for SIDCOs and subpart C DCOs by ensuring that these DCOs have sufficient liquidity in the relevant currency of corresponding obligations during the time it would take to liquidate or auction a defaulted clearing member's positions. The Commission also believes that the amendments to § 39.33(d)(5) will promote sound risk management practices by requiring SIDCOs with access to accounts and services at a Federal Reserve Bank to use those accounts and services where practical, thereby reducing investment risk as compared to holding funds at a commercial bank. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

b. Risk Management for SIDCOs and Subpart C DCOs – § 39.36

Regulation 39.36 requires a SIDCO or a subpart C DCO to conduct stress tests of its financial and liquidity resources and to regularly conduct sensitivity analyses of its margin models. The Commission is amending § 39.36(a)(6) to clarify that a SIDCO or subpart C DCO that is subject to the minimum financial resources requirement set forth in § 39.11(a)(1), rather than § 39.33(a), should use the results of its stress tests to support compliance with that requirement.

The Commission also is amending § 39.36(b)(2)(ii) to replace the words "produce accurate results" with "react appropriately" to more accurately reflect that the purpose of a sensitivity analysis is to assess whether the margin model will react appropriately to changes of inputs, parameters, and assumptions. The Commission is further amending § 39.36(d), which requires each SIDCO and subpart C DCO to "regularly" conduct an assessment of the theoretical and empirical properties of its margin model for all products it clears, to clarify that the assessment should be conducted on at least an annual basis (or more frequently if there are material relevant market developments). Lastly, the Commission is amending § 39.36(e) by adding the heading "[i]ndependent validation" to the provision. Because these changes are meant to clarify existing requirements, the Commission does not expect SIDCOs and subpart C DCOs to incur additional costs. The Commission did not receive any comments on the costs or benefits associated with these changes.

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(A) and (B) of the CEA, respectively, the Commission

believes that the amendments will protect market participants and the public, and promote the financial integrity of SIDCOs and the derivatives markets by, for example, ensuring that SIDCOs continue to test their margin models with sufficient frequency. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments.

c. Additional Disclosure for SIDCOs and Subpart C DCOs – § 39.37

Under § 39.37, a SIDCO or a subpart C DCO is required to publicly disclose its responses to the CPMI-IOSCO Disclosure Framework[72] and, in order to ensure the continued accuracy and usefulness of its responses, to review and update them at least every two years and following material changes to the SIDCO's or subpart C DCO's system or environment in which it operates. The Commission is amending § 39.37(b)(2) to additionally require that a SIDCO or a subpart C DCO notify the Commission no later than ten business days after any updates to its responses to the CPMI-IOSCO Disclosure Framework to reflect material changes to the DCO's system or environment. The notice would need to identify changes made since the latest version of the responses. The Commission is also amending § 39.37(c) to explicitly state that a SIDCO or a subpart C DCO must disclose relevant basic data on transaction volume and values that are consistent with the standards set forth in the CPMI-IOSCO Public Quantitative Disclosure Standards for Central Counterparties. These amendments are consistent with SIDCOs' and subpart C DCOs' existing CPMI-IOSCO obligations. SIFMA AMG supported the proposed requirement in § 39.37(b)(2) as SIFMA AMG believes it is

[72] *See* CMPI-IOSCO, Principles for Financial Market Infrastructures: Disclosure Framework and Assessment Methodology (Dec. 2012), available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD396.pdf*.

extremely useful in understanding the evolution of a SIDCO's or a subpart C DCO's Disclosure Framework. The Commission did not receive any comments on the costs of the proposed changes.

The Commission believes that amendments to § 39.37(b)(2) will help the Commission understand any material changes to the DCO's system or environment, allowing the Commission to more effectively improve the safety and financial integrity of the marketplace. Amendments to § 39.37(c) will improve public disclosure of relevant basic data on transaction volume and values, which can help promote competition and market integrity.

The Commission notes that most of the amendments to subpart C of part 39 clarify existing requirements and, as a result, the Commission does not expect that SIDCOs and subpart C DCOs would incur additional costs. The Commission believes any cost associated with the required reporting notice within amended § 39.37(b) would be nominal for SIDCOs and subpart C DCOs, as they already are required to periodically update the information publicly.

The Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(D) of the CEA, the Commission believes that the amendments will enhance the sound risk practices of centralized clearing by providing clearing members and their customers with more timely and transparent notice of a DCO's changes to its Disclosure Framework, thereby allowing these market participants, prospective DCO market participants, the Commission, and the public to more easily identify and analyze changes made since the DCO's last posted Disclosure Framework. The Commission has

considered the other section 15(a) factors and believes that they are not implicated by the amendments.

21. Part 140 – Organization, Functions, and Procedures of the Commission

The Commission is amending § 140.94 to provide the Director of the Division of Clearing and Risk with delegated authority to review DCO registration applications, determine whether an application is materially complete, request additional information in support of an application, stay the running of the 180-day review period for an application, and request additional information in support of a rule submission. The Commission believes that DCOs will benefit from the delegation of authority, as it will promote a more efficient process to address these aspects of registration and rule certification. The Commission has not identified any costs on DCOs or their members associated with the amendments to § 140.94. The Commission did not receive any comments on the costs or benefits of these changes. The Commission has considered the section 15(a) factors and believes that they are not implicated by these changes.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation.[73]

The Commission believes that the public interest to be protected by the antitrust laws is generally the promotion of competition. In the Proposal, the Commission requested comment on whether: (1) the proposed rulemaking implicates any other

[73] 7 U.S.C. 19(b).

specific public interest to be protected by the antitrust laws; (2) the proposed rulemaking is anticompetitive and, if it is, what the anticompetitive effects are; and (3) there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting the proposed rules. The Commission did not receive any comments in this regard.

The Commission has considered the rulemaking to determine whether it is anticompetitive and has identified no anticompetitive effects. Because the Commission has determined that the rules are not anticompetitive and have no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Definitions, Reporting and recordkeeping requirements, Swaps.

17 CFR Part 39

Application form, Business and industry, Commodity futures, Consumer protection, Default rules and procedures, Definitions, Enforcement authority, Participant and product eligibility, Reporting and recordkeeping requirements, Risk management, Settlement procedures, Swaps, Treatment of funds.

17 CFR Part 140

Authority delegations (Government agencies), Conflict of interests, Organization and functions (Government agencies).

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR chapter I as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24 (2012).

2. In § 1.20, revise paragraphs (d)(1), (7), and (8) introductory text to read as follows:

§ 1.20 Futures customer funds to be segregated and separately accounted for.

* * * * *

(d) * * *

(1) A futures commission merchant must obtain a written acknowledgment from each bank, trust company, derivatives clearing organization, or futures commission merchant prior to or contemporaneously with the opening of an account by the futures commission merchant with such depositories; *provided, however*, that a written acknowledgment need not be obtained from a derivatives clearing organization that has adopted and submitted to the Commission rules that provide for the segregation of futures customer funds in accordance with all relevant provisions of the Act and the rules in this chapter, and orders promulgated thereunder, and in such cases, the requirements set forth in paragraphs (d)(3) through (6) of this section shall not apply to the futures commission merchant.

* * * * *

(7) Where a written acknowledgment is required, the futures commission merchant shall promptly file a copy of the written acknowledgment with the Commission in the format and manner specified by the Commission no later than three business days after the opening of the account or the execution of a new written acknowledgment for an existing account, as applicable.

(8) Where a written acknowledgment is required, a futures commission merchant shall obtain a new written acknowledgment within 120 days of any changes in the following:

* * * * *

3. In § 1.59, revise paragraph (a)(1) to read as follows:

§ 1.59 Activities of self-regulatory organization employees, governing board members, committee members, and consultants.

(a) * * *

(1) *Self-regulatory organization* means a "self-regulatory organization," as defined in § 1.3.

* * * * *

4. In § 1.63, revise paragraph (a)(1) to read as follows:

§ 1.63 Service on self-regulatory organization governing boards or committees by persons with disciplinary histories.

(a) * * *

(1) *Self-regulatory organization* means a "self-regulatory organization," as defined in § 1.3, except as defined in paragraph (b)(6) of this section.

* * * * *

5. In § 1.64, revise paragraph (a)(1) to read as follows:

§ 1.64 Composition of various self-regulatory organization governing boards and major disciplinary committees.

(a) * * *

(1) *Self-regulatory organization* means "self-regulatory organization," as defined in § 1.3.

* * * * *

6. In § 1.69, revise paragraph (a)(7) to read as follows:

§ 1.69 Voting by interested members of self-regulatory organization governing boards and various committees.

(a) * * *

(7) *Self-regulatory organization* means a "self-regulatory organization," as defined in § 1.3, but excludes registered futures associations for the purposes of paragraph (b)(2) of this section.

* * * * *

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

7. The authority citation for part 39 continues to read as follows:

Authority: 7 U.S.C. 2, 7a–1, and 12a; 12 U.S.C. 5464; 15 U.S.C. 8325.

8. Revise § 39.2 to read as follows:

§ 39.2 Definitions.

For the purposes of this part:

Activity with a more complex risk profile includes:

(1) Clearing credit default swaps, credit default futures, or derivatives that reference either credit default swaps or credit default futures and

(2) Any other activity designated as such by the Commission pursuant to § 39.33(a)(3).

Back test means a test that compares a derivatives clearing organization's initial margin requirements with historical price changes to determine the extent of actual margin coverage.

Business day means the intraday period of time starting at the business hour of 8:15 a.m. and ending at the business hour of 4:45 p.m., on all days except Saturdays, Sundays, and any holiday on which a derivatives clearing organization and its domestic financial markets are closed, including a Federal holiday in the United States, as established under 5 U.S.C. 6103.

Customer account or customer origin means "customer account" as defined in § 1.3 of this chapter.

Depository institution has the meaning set forth in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).

Enterprise risk management means an enterprise-wide strategic business process intended to identify potential events that may affect the enterprise and to manage the probability or impact of those events on the enterprise as a whole, such that the overall risk remains within the enterprise's risk appetite and provides reasonable assurance that the derivatives clearing organization can continue to achieve its objectives.

Fully collateralized position means a contract cleared by a derivatives clearing organization that requires the derivatives clearing organization to hold, at all times, funds

in the form of the required payment sufficient to cover the maximum possible loss that a party or counterparty could incur upon liquidation or expiration of the contract.

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 in this chapter, and orders promulgated thereunder. 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; chief information security 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 the financial resources of such entities.

Subpart C derivatives clearing organization means any derivatives clearing organization, as defined in section 1a(15) of the Act and § 1.3 of this chapter, which:

(1) Is registered as a derivatives clearing organization under section 5b of the Act;

(2) Is not a systemically important derivatives clearing organization; and

(3) Has become subject to the provisions of subpart C of this part, pursuant to § 39.31.

Systemically important derivatives clearing organization means a financial market utility that is a derivatives clearing organization registered under section 5b of the Act, which is currently designated by the Financial Stability Oversight Council to be systemically important and for which the Commission acts as the Supervisory Agency pursuant to 12 U.S.C. 5462(8).

Trust company means a trust company that is a member of the Federal Reserve System, under section 1 of the Federal Reserve Act (12 U.S.C. 221), but that does not meet the definition of depository institution as set out in this section.

U.S. branch or agency of a foreign banking organization means the U.S. branch or agency of a foreign banking organization as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

9. Amend § 39.3 as follows:

a. Revise paragraphs (a), (b)(2)(i), and (c) through (f); and

b. Add paragraph (g).

The revisions and addition read as follows:

§ 39.3 Procedures for registration.

(a) *Application for registration*—(1) *General procedure.* An entity seeking to register as a derivatives clearing organization shall file 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, and may approve or deny the application. If the Commission approves the application, the Commission will register the applicant as a derivatives clearing organization subject to conditions as appropriate.

(2) *Application*. Any entity seeking to register as a derivatives clearing organization shall submit to the Commission a completed Form DCO, which shall include a cover sheet, all applicable exhibits, and any supplemental materials, as provided in appendix A to this part (application). 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 provide supplemental information in order for the Commission to process the application. The applicant shall provide supplemental information 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. An applicant is only required to submit exhibits and other information that are relevant to the application amendment when filing a Form DCO for the purpose of amending its pending 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 (up to and including the General Information section), Exhibit A-1 (regulatory compliance chart), Exhibit A-2 (proposed rulebook), Exhibit A-3 (narrative summary of proposed clearing activities), Exhibit A-7 (documents setting forth the applicant's corporate organizational structure), Exhibit A-8 (documents establishing the applicant's legal status and certificate(s) of good standing or its equivalent), and any other part of the application not covered by a request for confidential treatment, subject to § 145.9 of this chapter.

(6) *Extension of time for review*. The Commission may further extend the review period in paragraph (a)(1) of this section for any period of time to which the applicant agrees in writing.

(b) * * *

(2) * * *

(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 registration as a derivatives clearing organization that the application is materially incomplete and the running of the 180-day period under section 6(a) of the Act is stayed.

* * * * *

(c) *Withdrawal of application for registration.* An applicant for registration may withdraw its application submitted pursuant to paragraph (a) of this section by filing 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) *Amendment of an order of registration.* (1) A derivatives clearing organization requesting an amendment to an order of registration shall file the request with the Secretary of the Commission in the form and manner specified by the Commission.

(2) A derivatives clearing organization shall provide to the Commission, upon the Commission's request, any additional information and documentation necessary to review a request to amend an order of registration.

(3) The Commission shall issue an amended order of registration upon a Commission determination, in its own discretion, that the derivatives clearing organization would maintain compliance with the Act and the Commission's regulations in this chapter upon amendment to the order. If deemed appropriate, the Commission may issue an amended order of registration subject to conditions.

(4) The Commission may decline to issue an amended order based upon a Commission determination, in its own discretion, that the derivatives clearing

organization would not continue to maintain compliance with the Act and the Commission's regulations in this chapter upon amendment to the order.

(e) *Reinstatement of dormant registration*. Before accepting products for clearing, a dormant 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.

(f) *Vacation of registration*—(1) *Request*. A derivatives clearing organization may have its registration vacated pursuant to section 7 of the Act by submitting a request to the Secretary of the Commission in the format and manner specified by the Commission. A 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 derivatives clearing organization was registered with the Commission. The request shall include:

(i) The date that the vacation should take effect, which must be at least ninety days after the request was submitted;

(ii) A description of how the derivatives clearing organization intends to transfer or otherwise unwind all open positions at the derivatives clearing organization and how such actions reflect the interests of affected clearing members and their customers;

(iii) A statement that the derivatives clearing organization will continue to maintain its books and records for the requisite statutory and regulatory retention periods after its registration has been vacated; and

(iv) A statement that the derivatives clearing organization will continue to make its books and records available for inspection by any representative of the Commission or the United States Department of Justice after its registration has been vacated, as required by § 1.31 of this chapter.

(2) *Notice to registered entities*. The Commission shall fulfill its obligation to send a copy of the request and the order of vacation to all other registered entities by posting the documents on the Commission Web site.

(g) *Request for transfer of open interest*—(1) *Submission.* A derivatives clearing organization seeking to transfer its positions comprising open interest for clearing and settlement to another clearing organization shall submit rules for Commission approval pursuant to § 40.5 of this chapter.

(2) *Required information*. The rule submission shall include, at a minimum, the following:

(i) The underlying agreement that governs the transfer;

(ii) A description of the transfer, including the reason for the transfer and the impact of the transfer 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 in this chapter, as applicable;

(iv) The transferee's rules marked to show changes that would result from acceptance of the transferred positions;

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

(vi) A representation by the transferee that it is in and will maintain compliance with any applicable provisions of the Act, including the core principles applicable to derivatives clearing organizations, and the Commission's regulations upon the transfer of the open interest.

(3) *Commission action*. The Commission may request additional information in support of a rule submission filed under paragraph (g)(1) of this section, and may grant approval of the rules in accordance with § 40.5 of this chapter.

10. In § 39.4, revise paragraphs (a) and (e) to read as follows:

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

(a) *Request for approval of rules*. 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.

* * * * *

(e) *Holding securities in a futures portfolio margining account*. A derivatives clearing organization seeking to provide a portfolio margining program under which securities would be held in a futures account as defined in § 1.3 of this chapter, shall

submit rules to implement such portfolio margining program for Commission approval in accordance with § 40.5 of this chapter. Concurrent with the submission of such rules for Commission approval, the derivatives clearing organization shall petition the Commission for an order under section 4d(a) of the Act.

11. Amend § 39.10 as follows:

a. Revise paragraphs (c)(1)(ii) and (iv), (3) introductory text, (3)(i), 3(ii) introductory text, 3(ii)(A), and (3)(v), and (4)(i) and (ii); and

b. Add paragraph (d).

The revisions and addition read as follows:

§ 39.10 Compliance with core principles.

* * * * *

(c) * * *

(1) * * *

(ii) The chief compliance officer shall report to the board of directors or the senior officer of the derivatives clearing organization or, if the derivatives clearing organization engages in substantial activities not related to clearing, the senior officer responsible for the derivatives clearing organization's clearing activities. The board of directors or the senior officer shall approve the compensation of the chief compliance officer.

* * * * *

(iv) A change in the designation of the individual serving as the chief compliance officer of the derivatives clearing organization shall be reported to the Commission in accordance with the requirements of § 39.19(c)(4)(x).

* * * * *

(3) *Annual report*. The chief compliance officer shall, not less than annually, prepare and sign a written report that covers the most recently completed fiscal year of the derivatives clearing organization. The annual report shall, at a minimum:

(i) Contain a description of the derivatives clearing organization's written policies and procedures, including the code of ethics and conflict of interest policies; provided that, to the extent that the derivatives clearing organization's written policies and procedures have not materially changed since they were most recently described in an annual report to the Commission, and if the annual report containing the most recent description was submitted within the last five years, the annual report may instead incorporate by reference the relevant descriptions from the most recent annual report containing the description;

(ii) Review each core principle and applicable Commission regulation in this chapter including, in the case of systemically important derivatives clearing organizations and subpart C derivatives clearing organizations, regulations in subpart C of this part, and with respect to each:

(A) Identify, by name, rule number, or other identifier, the compliance policies and procedures that are designed to ensure compliance with each core principle and applicable regulation in this chapter;

* * * * *

(v) Describe any material compliance matters, including incidents of noncompliance, since the date of the last annual report, and describe the corresponding action taken.

(4) * * *

(i) Prior to submitting the annual report to the Commission, the chief compliance officer shall provide the annual report to the board of directors or the senior officer of the derivatives clearing organization or, if the derivatives clearing organization engages in substantial activities not related to clearing, the senior officer responsible for the derivatives clearing organization's clearing activities, for review. Submission of the report to the board of directors or the senior officer shall be recorded in the board minutes or otherwise, as evidence of compliance with the requirement in this paragraph (c)(4)(i). The annual report shall describe the process by which it was submitted to the board of directors or the senior officer. When submitted to the Commission, the annual report shall be accompanied by a cover letter, notice, or other document that specifies the date on which it was submitted to the board of directors or the senior officer.

(ii) The annual report shall be submitted to the Secretary of the Commission in the format and manner specified by the Commission not more than 90 days after the end of the derivatives clearing organization's fiscal year. The report shall include a certification by the chief compliance officer that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the annual report is accurate and complete.

* * * * *

(d) *Enterprise risk management*—(1) *General*. A derivatives clearing organization shall have an enterprise risk management program that identifies and assesses sources of risk and their potential impact on the operations and services of the derivatives clearing organization. The derivatives clearing organization shall measure, monitor, and manage identified sources of risk on an ongoing basis, including through the development and use of appropriate information systems. The derivatives clearing

organization shall test the effectiveness of any mitigating controls employed to reduce identified sources of risk to ensure that the risks are properly mitigated.

(2) *Enterprise risk management framework.* A derivatives clearing organization shall establish and maintain written policies and procedures, approved by its board of directors or a committee of the board of directors that establish an appropriate enterprise risk management framework. The framework shall be reviewed at least annually by the board of directors or committee of the board of directors and updated as necessary.

(3) *Standards for enterprise risk management framework.* A derivatives clearing organization shall follow generally accepted standards and industry best practices in the development and review of its enterprise risk management framework, assessment of the performance of its enterprise risk management program, and management and mitigation of risk to the derivatives clearing organization.

(4) *Enterprise risk officer*. A derivatives clearing organization shall identify as its enterprise risk officer an appropriate individual that exercises the full responsibility and authority to manage the enterprise risk management program of the derivatives clearing organization. The enterprise risk officer shall have the authority, independence, resources, expertise, and access to relevant information necessary to fulfill the responsibilities of the position, including access to the board of directors of the organization for which the enterprise risk officer is responsible for managing the risks or an appropriate committee thereof, consistent with the requirements of this section.

12. In § 39.11, revise paragraphs (a) introductory text and (a)(2), (b)(1) introductory text and (b)(1)(i) through (v), (c), (d)(2)(iv), (e)(1)(ii)(A) through (C) and

(iii) through (iv), (e)(2) and (3) and (4)(i), (f) introductory text, (f)(1) introductory text and (f)(1)(i)(A) and (ii) through (iv), and (f)(2) through (4) to read as follows:

§ 39.11 Financial resources.

(a) *General*. A derivatives clearing organization shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization. A derivatives clearing organization shall maintain sufficient financial resources to cover its exposures with a high degree of confidence. At a minimum, each derivatives clearing organization shall possess financial resources that exceed the total amount that would:

(1) * * *

(2) Enable the derivatives clearing organization to cover its operating costs for a period of at least one year, calculated on a rolling basis. A derivatives clearing organization shall identify and adequately manage its general business risks and hold sufficient liquid resources to cover potential business losses that are not related to clearing members' defaults, so that the derivatives clearing organization can continue to provide services as a going concern.

(b) * * *

(1) Financial resources available to satisfy the requirements of paragraph (a)(1) of this section may include:

(i) The derivatives clearing organization's own capital;

(ii) Guaranty fund deposits;

(iii) Default insurance;

(iv) Potential assessments for additional guaranty fund contributions, if permitted by the derivatives clearing organization's rules; and

(v) Any other financial resource deemed acceptable by the Commission.

* * * * *

(c) *Calculation of financial resources requirements.* (1) A derivatives clearing organization shall, on a monthly basis, perform stress tests that will allow it to make a reasonable calculation of the financial resources needed to meet the requirements of paragraph (a)(1) of this section. The derivatives clearing organization shall have reasonable discretion in determining the methodology used to calculate the requirements, subject to the limitations identified in paragraph (c)(2) of this section, and provided that the methodology must take into account both historical data and hypothetical scenarios. The Commission may review the methodology and require changes as appropriate. The requirements of this paragraph (c) do not apply to fully collateralized positions.

(2) When calculating its largest financial exposure, a derivatives clearing organization:

(i) In netting its exposure against the clearing member's initial margin, shall:

(A) Use only that portion of the margin amount on deposit (including initial margin and any add-ons) that is required; and

(B) Use customer margin (including initial margin and any add-ons) only to the extent permitted by parts 1 and 22 of this chapter, as applicable;

(ii) Shall combine the customer and house stress test losses of each clearing member using the same stress test scenarios;

(iii) May net any gains in the house account with losses in the customer account, if permitted by the derivatives clearing organization's rules, but shall not net losses in the house account with gains in the customer account; and

(iv) With respect to a clearing member's cleared swaps customer account, may net customer gains against customer losses only to the extent permitted by the derivatives clearing organization's rules.

(3) A derivatives clearing organization shall, on a monthly basis, make a reasonable calculation of its projected operating costs over a 12-month period in order to determine the amount needed to meet the requirements of paragraph (a)(2) of this section. The derivatives clearing organization shall have reasonable discretion in determining the methodology used to compute such projected operating costs. The Commission may review the methodology and require changes as appropriate.

(d) * * *

(2) * * *

(iv) The derivatives clearing organization shall only count the value of assessments, after the haircut, to meet up to 20 percent of the total amount required under paragraph (a)(1) of this section. The value of the assessments may be determined by using the largest financial exposure in extreme but plausible market conditions prior to netting against required initial margin on deposit.

(e) * * *

(1) * * *

(ii) * * *

(A) Calculate the average daily settlement variation pay for each clearing member over the last fiscal quarter;

(B) Calculate the sum of those average daily settlement variation pays; and

(C) Using that sum, calculate the average of its clearing members' average daily settlement variation pays.

(iii) If the total amount of the financial resources required pursuant to the calculation set forth in paragraph (e)(1)(ii) of this section is insufficient to enable the derivatives clearing organization to fulfill its obligations during a one-day settlement cycle, the derivatives clearing organization may take into account a committed line of credit or similar facility for the purpose of meeting the remainder of the requirement of this paragraph (e) (subject to the limitation in paragraph (e)(3) of this section).

(iv) A derivatives clearing organization is not subject to paragraph (e)(1)(ii) of this section for fully collateralized positions.

(2) The financial resources allocated by the derivatives clearing organization to meet the requirements of paragraph (a)(2) of this section must include unencumbered, liquid financial assets (*i.e.*, cash and/or highly liquid securities) sufficient to enable the derivatives clearing organization to cover its operating costs for a period of at least six months. If the financial resources allocated to meet the requirements of paragraph (a)(2) of this section do not include such assets in a sufficient amount, the derivatives clearing organization may take into account a committed line of credit or similar facility for the purpose of meeting the requirements of this paragraph (subject to the limitation in paragraph (e)(3) of this section).

(3) A committed line of credit or similar facility may be allocated, in whole or in part, to satisfy the requirements of either paragraph (e)(1)(ii) or (e)(2) of this section, but not both paragraphs.

(4)(i) Assets in a guaranty fund shall have minimal credit, market, and liquidity risks and shall be readily accessible on a same-day basis;

* * * * *

(f) *Reporting requirements*—(1) *Quarterly reporting.* Each fiscal quarter, or at any time upon Commission request, a derivatives clearing organization shall:

(i) * * *

(A) The amount of financial resources necessary to meet the requirements of paragraph (a) of this section and §§ 39.33(a) and 39.39(d), if applicable;

* * * * *

(ii) Provide the Commission with a financial statement, including the balance sheet, income statement, and statement of cash flows, prepared in accordance with U.S. generally accepted accounting principles, of the derivatives clearing organization; *provided, however,* that for a derivatives clearing organization that is incorporated or organized under the laws of any foreign country, the financial statement may be prepared in accordance with either U.S. generally accepted accounting principles or the International Financial Reporting Standards issued by the International Accounting Standards Board; and

(iii) Report to the Commission the value of each individual clearing member's guaranty fund deposit, if the derivatives clearing organization reports having guaranty

fund deposits as a financial resource available to satisfy the requirements of paragraph (a)(1) of this section and §§ 39.33(a) and 39.39(d), if applicable.

(iv) The calculations required by this paragraph (f) shall be made as of the last business day of the derivatives clearing organization's fiscal quarter. The report shall be submitted not later than 17 business days after the end of the derivatives clearing organization's fiscal quarter, or at such later time as the Commission may permit, in its discretion, upon request by the derivatives clearing organization.

(2) *Annual reporting*. (i) A derivatives clearing organization shall submit to the Commission an audited year-end financial statement of the derivatives clearing organization calculated in accordance with U.S. generally accepted accounting principles; provided, however, that for a derivatives clearing organization that is incorporated or organized under the laws of any foreign country, the financial statement may be prepared in accordance with either U.S. generally accepted accounting principles or the International Financial Reporting Standards issued by the International Accounting Standards Board.

(ii) The report required by paragraph (f)(2)(i) of this section shall be submitted not later than 90 days after the end of the derivatives clearing organization's fiscal year, or at such later time as the Commission may permit, in its discretion, upon request by the derivatives clearing organization.

(iii) A derivatives clearing organization shall submit concurrently with the audited year-end financial statement required by paragraph (f)(2)(i) of this section:

(A) A reconciliation, including appropriate explanations, of its balance sheet in the audited year-end financial statement with the balance sheet in the derivatives clearing

organization's financial statement for the last quarter of the fiscal year when material differences exist or, if no material differences exist, a statement so indicating; and

(B) Such further information as may be necessary to make the statements not misleading.

(3) *Other reporting*. (i) A derivatives clearing organization shall provide to the Commission as part of its first report under paragraph (f)(1) of this section, and in the event of any change thereafter:

(A) Sufficient documentation explaining the methodology used to compute its financial resources requirements under paragraph (a) of this section and §§ 39.33(a) and 39.39(d), if applicable; and

(B) Sufficient documentation explaining the basis for its determinations regarding the valuation and liquidity requirements set forth in paragraphs (d) and (e) of this section.

(ii) A derivatives clearing organization shall provide to the Commission copies of any agreements establishing or amending a credit facility, insurance coverage, or other arrangement evidencing or otherwise supporting the derivatives clearing organization's conclusions regarding its:

(A) Financial resources available to satisfy the requirements of paragraph (a) of this section and §§ 39.33(a) and 39.39(d), if applicable; and

(B) Liquidity resources available to satisfy the requirements of paragraph (e) of this section and § 39.33(c), if applicable.

(4) *Certification*. A derivatives clearing organization shall provide with each report submitted pursuant to this section a certification by the person responsible for the accuracy and completeness of the report that, to the best of his or her knowledge and

reasonable belief, and under penalty of law, the information contained in the report is accurate and complete.

13. In § 39.12, revise paragraphs (a) introductory text, (a)(1)(i), (a)(4), (a)(5)(ii) through (v), (a)(6), (b)(1) introductory text, and (b)(2) to read as follows:

§ 39.12 Participant and product eligibility.

(a) *Participant eligibility*. A derivatives clearing organization shall have appropriate admission and continuing participation requirements for clearing members of the derivatives clearing organization that are objective, publicly disclosed, and risk-based.

(1) * * *

(i) A derivatives clearing organization shall not have restrictive clearing member standards if less restrictive requirements that achieve the same objective and that would not materially increase risk to the derivatives clearing organization or clearing members could be adopted;

* * * * *

(4) *Monitoring*. A derivatives clearing organization shall have procedures to verify, on an ongoing basis, the compliance of each clearing member with each participation requirement of the derivatives clearing organization.

(5) * * *

(ii) A derivatives clearing organization shall require clearing members that are futures commission merchants to provide the financial reports that are specified in § 1.10 of this chapter to the derivatives clearing organization.

(iii) A derivatives clearing organization shall require clearing members that are not futures commission merchants to make the periodic financial reports provided pursuant to paragraph (a)(5)(i) of this section available to the Commission upon the Commission's request or, in lieu of imposing the requirement in this paragraph (a)(5)(iii), a derivatives clearing organization may provide such financial reports directly to the Commission upon the Commission's request.

(iv) A derivatives clearing organization shall have rules that require clearing members to provide to the derivatives clearing organization, in a timely manner, information that concerns any financial or business developments that may materially affect the clearing members' ability to continue to comply with participation requirements under this section.

(v) The requirements in paragraphs (a)(5)(i) and (iii) of this section shall not apply with respect to non-futures commission merchant clearing members of a derivatives clearing organization that only clear fully collateralized positions.

(6) *Enforcement.* A derivatives clearing organization shall have the ability to enforce compliance with its participation requirements and shall have procedures for the suspension and orderly removal of clearing members that no longer meet the requirements.

(b) * * *

(1) A derivatives clearing organization shall have appropriate requirements for determining the eligibility of agreements, contracts, or transactions submitted to the derivatives clearing organization for clearing, taking into account the derivatives clearing organization's ability to manage the risks associated with such agreements, contracts, or

transactions. Factors to be considered in determining product eligibility include, but are not limited to:

* * * * *

(2) A derivatives clearing organization that clears swaps shall have rules providing that all swaps with the same terms and conditions, as defined by product specifications established under derivatives clearing organization rules, submitted to the derivatives clearing organization for clearing are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization.

* * * * *

14. Amend § 39.13 as follows:

a. Revise paragraphs (b), (f), (g)(2)(i), (g)(3), (g)(4)(i) introductory text, (g)(7)(iii), (g)(8), (g)(12), (h)(1)(i) introductory text, (h)(3)(iii), (h)(5)(i) introductory text, and (h)(5)(ii); and

b. Add paragraph (i).

The revisions and addition read as follows:

§ 39.13 Risk management.

* * * * *

(b) *Risk management framework.* A derivatives clearing organization shall have and implement written policies, procedures, and controls, approved by its board of directors, that establish an appropriate risk management framework that, at a minimum, clearly identifies and documents the range of risks to which the derivatives clearing organization is exposed, addresses the monitoring and management of the entirety of

those risks, and provides a mechanism for internal audit. The risk management framework shall be regularly reviewed and updated as necessary.

* * * * *

(f) *Limitation of exposure to potential losses from defaults*. A derivatives clearing organization shall limit its exposure to potential losses from defaults by its clearing members through margin requirements and other risk control mechanisms reasonably designed to ensure that:

(1) The operations of the derivatives clearing organization would be disrupted; and

(2) Non-defaulting clearing members would be exposed to losses that non-defaulting clearing members cannot anticipate or control.

(g) * * *

(2) * * *

(i) A derivatives clearing organization shall have initial margin requirements that are commensurate with the risks of each product and portfolio, including any unusual characteristics of, or risks associated with, particular products or portfolios.

* * * * *

(3) *Independent validation*. A derivatives clearing organization shall have its systems for generating initial margin requirements, including its theoretical models, reviewed and validated by a qualified and independent party on an annual basis. Where no material changes to the margin model have occurred, previous validations can be reviewed and affirmed as part of the annual review process. Qualified and independent parties may be independent contractors or employees of the derivatives clearing

organization, or of an affiliate of the derivatives clearing organization, but shall not be persons responsible for development or operation of the systems and models being tested.

(4) * * *

(i) A derivatives clearing organization may allow reductions in initial margin requirements for related positions if the price risks with respect to such positions are significantly and reliably correlated. The price risks of different positions will only be considered to be reliably correlated if there is a conceptual basis for the correlation in addition to an exhibited statistical correlation. That conceptual basis may include, but is not limited to, the following:

* * * * *

(7) * * *

(iii) In conducting back tests of initial margin requirements, a derivatives clearing organization shall compare portfolio losses only to those components of initial margin that capture changes in market risk factors.

(8) *Customer margin*—(i) *Gross margin.* (A) During the end-of-day settlement cycle, a derivatives clearing organization shall collect initial margin on a gross basis for each clearing member's customer account(s) equal to the sum of the initial margin amounts that would be required by the derivatives clearing organization for each individual customer within that account if each individual customer were a clearing member.

(B) For purposes of calculating the gross initial margin requirement for each clearing member's customer account(s), a derivatives clearing organization shall have rules that require its clearing members to provide to the derivatives clearing organization

reports each day setting forth end-of-day gross positions of each individual customer account within each customer origin of the clearing member.

(C) A derivatives clearing organization may not, and may not permit its clearing members to, net positions of different customers against one another.

(D) A derivatives clearing organization may collect initial margin for its clearing members' house accounts on a net basis.

(ii) *Customer initial margin requirements*. A derivatives clearing organization shall require its clearing members to collect customer initial margin at a level that is not less than 100 percent of the derivatives clearing organization's clearing initial margin requirements with respect to each product and portfolio and commensurate with the risk presented by each customer account. The derivatives clearing organization shall have reasonable discretion in determining clearing initial margin requirements for products or portfolios. The derivatives clearing organization shall also have reasonable discretion in determining whether and by how much customer initial margin requirements shall, at a minimum, exceed clearing initial margin requirements for categories of customers determined by the clearing member to have heightened risk profiles. The Commission may review such customer initial margin levels and require different levels if the Commission deems the levels insufficient to protect the financial integrity of the derivatives clearing organization or its clearing members.

* * * * *

(12) *Haircuts.* A derivatives clearing organization shall apply appropriate reductions in value to reflect credit, market, and liquidity risks (haircuts), to the assets that it accepts in satisfaction of initial margin obligations, taking into consideration

stressed market conditions, and shall evaluate the appropriateness of the haircuts on at least a monthly basis.

* * * * *

(h) * * *

(1) * * *

(i) A derivatives clearing organization shall impose risk limits on each clearing member, by house origin and by each customer origin, in order to prevent a clearing member from carrying positions for which the risk exposure exceeds a specified threshold relative to the clearing member's and/or the derivatives clearing organization's financial resources. The derivatives clearing organization shall have reasonable discretion in determining:

* * * * *

(3) * * *

(iii) The requirements in paragraphs (h)(3)(i) and (ii) of this section do not apply with respect to clearing member accounts that hold only fully collateralized positions.

* * * * *

(5) * * *

(i) A derivatives clearing organization shall have rules that:

* * * * *

(ii) A derivatives clearing organization shall review the risk management policies, procedures, and practices of each of its clearing members, which address the risks that such clearing members may pose to the derivatives clearing organization, on a periodic

basis, take appropriate action to address concerns identified in such reviews, and document such reviews and the basis for determining what action was appropriate to take.

* * * * *

(i) *Cross-margining*. (1) A derivatives clearing organization that seeks to implement or modify a cross-margining program with one or more clearing organizations shall submit rules for Commission approval pursuant to § 40.5 of this chapter. The submission shall include information sufficient for the Commission to understand the risks that would be posed by the program and the means by which the derivatives clearing organization would address and mitigate those risks.

(2) The Commission may request additional information in support of a rule submission filed under this paragraph (i), and may approve such rules in accordance with § 40.5 of this chapter.

15. In § 39.15, revise paragraphs (b) introductory text, (b)(1), (b)(2) introductory text, (b)(2)(i) introductory text, (b)(2)(i)(A), (D), (F), and (H) through (L), (b)(2)(ii) and (iii), (d) introductory text, and (e) to read as follows:

§ 39.15 Treatment of funds.

* * * * *

(b) *Customer funds*—(1) *Segregation*. A derivatives clearing organization shall comply with the applicable segregation requirements of section 4d of the Act and Commission regulations in this part, or any other applicable Commission regulation in this chapter or order requiring that customer funds and assets, including money, securities, and property, be segregated, set aside, or held in a separate account.

(2) *Commingling*—(i) *Cleared swaps account*. In order for a derivatives clearing organization and its clearing members to commingle customer positions in futures, options, foreign futures, foreign options, and swaps, or any combination thereof, and any money, securities, or property received to margin, guarantee or secure such positions, in an account subject to the requirements of section 4d(f) of the Act, the derivatives clearing organization shall file rules for Commission approval pursuant to § 40.5 of this chapter. Such rule submission shall include, at a minimum, the following:

(A) Identification of the products that would be commingled, including product specifications or the criteria that would be used to define eligible products;

* * * * *

(D) Analysis of the liquidity of the respective markets for the eligible products, the ability of clearing members and the derivatives clearing organization to offset or mitigate the risk of such eligible products in a timely manner, without compromising the financial integrity of the account, and, as appropriate, proposed means for addressing insufficient liquidity;

* * * * *

(F) A description of the financial, operational, and managerial standards or requirements for clearing members that would be permitted to commingle eligible products;

* * * * *

(H) A description of the financial resources of the derivatives clearing organization, including the composition and availability of a guaranty fund with respect to the eligible products that would be commingled;

(I) A description and analysis of the margin methodology that would be applied to the commingled eligible products, including any margin reduction applied to correlated positions, and any applicable margin rules with respect to both clearing members and customers;

(J) An analysis of the ability of the derivatives clearing organization to manage a potential default with respect to any of the eligible products that would be commingled;

(K) A discussion of the procedures that the derivatives clearing organization would follow if a clearing member defaulted, and the procedures that a clearing member would follow if a customer defaulted, with respect to any of the commingled eligible products in the account; and

(L) A description of the arrangements for obtaining daily position data with respect to eligible products in the account.

(ii) *Futures account*. In order for a derivatives clearing organization and its clearing members to commingle customer positions in futures, options, foreign futures, foreign options, and swaps, or any combination thereof, and any money, securities, or property received to margin, guarantee or secure such positions, in an account subject to the requirements of section 4d(a) of the Act, the derivatives clearing organization shall file rules for Commission approval pursuant to § 40.5 of this chapter. Such rule submission shall include, at a minimum, the information required under paragraph (b)(2)(i) of this section.

(iii) *Commission action*. The Commission may request additional information in support of a rule submission filed under paragraph (b)(2)(i) or (ii) of this section, and may approve such rules in accordance with § 40.5 of this chapter.

* * * * *

(d) *Transfer of customer positions*. A derivatives clearing organization shall have rules providing that the derivatives clearing organization will promptly transfer all or a portion of a customer's portfolio of positions, and related funds as necessary, from the carrying clearing member of the derivatives clearing organization to another clearing member of the derivatives clearing organization, without requiring the close-out and re-booking of the positions prior to the requested transfer, subject to the following conditions:

* * * * *

(e) *Permitted investments*. Funds and assets belonging to clearing members and their customers that are invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks. Any investment of customer funds or assets, including cleared swaps customer collateral, as defined in § 22.1 of this chapter, by a derivatives clearing organization shall comply with § 1.25 of this chapter.

16. Amend § 39.16 as follows:

a. Revise paragraphs (a), (b), (c)(1), (c)(2) introductory text, (c)(2)(ii), (c)(2)(iii)(C), and (d)(1); and

b. Add paragraph (e).

The revisions and addition read as follows:

§ 39.16 Default rules and procedures.

(a) *General.* A derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events during which

clearing members become insolvent or default on the obligations of such clearing members to the derivatives clearing organization.

(b) *Default management plan.* A derivatives clearing organization shall maintain a current written default management plan that delineates the roles and responsibilities of its board of directors, its risk management committee, any other committee that a derivatives clearing organization may have that has responsibilities for default management, and the derivatives clearing organization's management, in addressing a default, including any necessary coordination with, or notification of, other entities and regulators. Such plan shall address any differences in procedures with respect to highly liquid products and less liquid products. A derivatives clearing organization shall conduct and document a test of its default management plan at least on an annual basis. The derivatives clearing organization shall include clearing members and participants in a test of its default management plan at least on an annual basis to the extent the plan relies on their participation.

(c) * * *

(1) A derivatives clearing organization shall have procedures that would permit the derivatives clearing organization to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a default on the obligations of a clearing member to the derivatives clearing organization.

(2) A derivatives clearing organization shall have rules that set forth its default procedures, including:

* * * * *

(ii) The actions that the derivatives clearing organization may take upon a default, which shall include public notice of a declaration of default on its website and the prompt transfer, liquidation, or hedging of the customer or house positions of the defaulting clearing member, as applicable, and which may include, in the discretion of the derivatives clearing organization, the auctioning or allocation of such positions to other clearing members;

(iii) * * *

(C) The derivatives clearing organization shall not require a clearing member to bid for a portion of, or accept an allocation of, the defaulting clearing member's positions that is not proportional to the size of the bidding or accepting clearing member's positions in the same product class at the derivatives clearing organization;

* * * * *

(d) * * *

(1) A derivatives clearing organization shall have rules that require a clearing member to provide prompt notice to the derivatives clearing organization if it becomes the subject of a bankruptcy petition, receivership proceeding, or the equivalent;

* * * * *

(e) *Fully collateralized positions.* A derivatives clearing organization may satisfy the requirements of paragraphs (a), (b), and (c) of this section by having rules that permit it to clear only fully collateralized positions.

17. In § 39.17, revise paragraphs (a) introductory text, (a)(1) and (3), and (b) to read as follows:

§ 39.17 Rule enforcement.

(a) *General*. A derivatives clearing organization shall:

(1) Maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance (by itself and its clearing members) with the rules of the derivatives clearing organization and the resolution of disputes;

* * * * *

(3) Report to the Commission regarding rule enforcement activities and sanctions imposed against clearing members as provided in paragraph (a)(2) of this section, in accordance with § 39.19(c)(4)(xvi).

(b) *Authority to enforce rules*. The board of directors of the derivatives clearing organization may delegate responsibility for compliance with the requirements of paragraph (a) of this section to an appropriate committee, unless the responsibilities are otherwise required to be carried out by the chief compliance officer pursuant to the Act or this part.

18. In § 39.19, revise paragraphs (a), (b), (c) introductory text, (c)(1) introductory text, (c)(1)(i), (c)(1)(ii) introductory text, (c)(1)(ii)(C), and (c)(2) through (c)(5) to read as follows:

§ 39.19 Reporting.

(a) *General*. A derivatives clearing organization shall provide to the Commission the information specified in this section and any other information that the Commission determines to be necessary to conduct oversight of the derivatives clearing organization.

(b) *Submission of reports*—(1) *General requirement.* A derivatives clearing organization shall submit the information required by this section to the Commission in a format and manner specified by the Commission.

(2) *Certification.* When making a submission pursuant to this section, an employee of the derivatives clearing organization must certify that he or she is duly authorized to make such a submission on behalf of the derivatives clearing organization.

(3) *Time zones*. Unless otherwise specified by the Commission or its designee, any stated time in this section is Central time for information concerning derivatives clearing organizations located in that time zone, and Eastern time for information concerning all other derivatives clearing organizations.

(c) *Reporting requirements.* Each registered derivatives clearing organization shall provide to the Commission or other person as may be required or permitted by this paragraph (c) the information specified as follows:

(1) *Daily reporting.* (i) A derivatives clearing organization shall compile as of the end of each trading day, and submit to the Commission by 10:00 a.m. on the next business day, a report containing the following information related to all positions other than fully collateralized positions:

(A) Initial margin requirements and initial margin on deposit for each clearing member, by house origin and by each customer origin, and by each individual customer account;

(B) Daily variation margin, separately listing the mark-to-market amount collected from or paid to each clearing member, by house origin and by each customer origin, and by each individual customer account;

(C) All other daily cash flows relating to clearing and settlement including, but not limited to, option premiums and payments related to swaps such as coupon amounts,

collected from or paid to each clearing member, by house origin and by each customer origin, and by each individual customer account; and

(D) End-of-day positions, including as appropriate the risk sensitivities and valuation data that the derivatives clearing organization generates, creates, or calculates in connection with managing the risks associated with such positions, for each clearing member, by house origin and by each customer origin, and by each individual customer account. The derivatives clearing organization shall identify each individual customer account using both a legal entity identifier and any internally-generated identifier, where available, within each customer origin for each clearing member.

(ii) The report shall contain the information required by paragraphs (c)(1)(i)(A) through (D) of this section for:

* * * * *

(C) All securities positions that are:

(*1*) Held in a customer account subject to section 4d of the Act; or

(*2*) Subject to a cross-margining agreement.

(2) *Quarterly reporting*. A derivatives clearing organization shall provide to the Commission each fiscal quarter, or at any time upon Commission request, a report of the derivatives clearing organization's financial resources as required by § 39.11(f)(1).

(3) *Annual reporting*. A derivatives clearing organization shall provide to the Commission each year:

(i) The annual report of the chief compliance officer required by § 39.10; and

(ii) Audited year-end financial statements of the derivatives clearing organization as required by § 39.11(f)(2).

(iii) [Reserved]

(iv) The reports required by this paragraph (c)(3) shall be filed not later than 90 days after the end of the derivatives clearing organization's fiscal year, or at such later time as the Commission may permit, in its discretion, upon request by the derivatives clearing organization.

(4) *Event-specific reporting*—(i) *Decrease in financial resources*. If there is a decrease of 25 percent or more in the total value of the financial resources available to satisfy the requirements under § 39.11(a)(1) or § 39.33(a), as applicable, either from the last quarterly report submitted under § 39.11(f) or from the value as of the close of the previous business day, a derivatives clearing organization shall report such decrease to the Commission no later than one business day following the day the 25 percent threshold was reached. The report shall include:

(A) The total value of the financial resources as of the close of business the day the 25 percent threshold was reached;

(B) If reporting a decrease in value from the previous business day, the total value of the financial resources immediately prior to the 25 percent decline;

(C) A breakdown of the value of each financial resource reported in each of paragraphs (c)(4)(i)(A) and (B) of this section, calculated in accordance with the requirements of § 39.11(d) or § 39.33(b), as applicable, including the value of each individual clearing member's guaranty fund deposit if the derivatives clearing organization reports guaranty fund deposits as a financial resource; and

(D) A detailed explanation for the decrease.

(ii) *Decrease in liquidity resources*. If there is a decrease of 25 percent or more in the total value of the liquidity resources available to satisfy the requirements under § 39.11(e) or § 39.33(c), as applicable, either from the last quarterly report submitted under § 39.11(f) or from the value as of the close of the previous business day, a derivatives clearing organization shall report such decrease to the Commission no later than one business day following the day the 25 percent threshold was reached. The report shall include:

(A) The total value of the liquidity resources as of the close of business the day the 25 percent threshold was reached;

(B) If reporting a decrease in value from the previous business day, the total value of the liquidity resources immediately prior to the 25 percent decline;

(C) A breakdown of the value of each liquidity resource reported in each of paragraphs (c)(4)(ii)(A) and (B) of this section, calculated in accordance with the requirements of § 39.11(e) or § 39.33(c), as applicable, including the value of each individual clearing member's guaranty fund deposit if the derivatives clearing organization reports guaranty fund deposits as a liquidity resource; and

(D) A detailed explanation for the decrease.

(iii) *Decrease in ownership equity*. A derivatives clearing organization shall report to the Commission no later than two business days prior to an event which the derivatives clearing organization knows or reasonably should know will cause a decrease of 20 percent or more in ownership equity from the last reported ownership equity balance as reported on a quarterly or audited financial statement required to be submitted by paragraph (c)(2) or (c)(3)(ii), respectively, of this section; but in any event no later

than two business days after such decrease in ownership equity for events that caused the decrease about which the derivatives clearing organization did not know and reasonably could not have known prior to the event. The report shall include:

(A) Pro forma financial statements reflecting the derivatives clearing organization's estimated future financial condition following the anticipated decrease for reports submitted prior to the anticipated decrease and current financial statements for reports submitted after such a decrease; and

(B) A detailed explanation for the decrease or anticipated decrease in the balance.

(iv) *Six-month liquid asset requirement*. A derivatives clearing organization shall notify the Commission immediately when the derivatives clearing organization knows or reasonably should know of a deficit in the six-month liquid asset requirement of § 39.11(e)(2).

(v) *Change in current assets*. A derivatives clearing organization shall notify the Commission no later than two business days after the derivatives clearing organization's current liabilities exceed its current assets. The notice shall include a balance sheet that reflects the derivatives clearing organization's current assets and current liabilities and an explanation as to the reason for the negative balance.

(vi) *Request to clearing member to reduce its positions*. A derivatives clearing organization shall notify the Commission immediately of a request by the derivatives clearing organization to one of its clearing members to reduce the clearing member's positions. The notice shall include:

(A) The name of the clearing member;

(B) The time the clearing member was contacted;

(C) The number of positions for futures and options, and for swaps, the number of outstanding trades and notional amount, by which the derivatives clearing organization requested the reduction;

(D) All products that are the subject of the request; and

(E) The reason for the request.

(vii) *Determination to transfer or liquidate positions*. A derivatives clearing organization shall notify the Commission immediately of a determination by the derivatives clearing organization that a position it carries for one of its clearing members must be liquidated immediately or transferred immediately, or that the trading of any account of a clearing member shall be only for the purpose of liquidation because that clearing member has failed to meet an initial or variation margin call or has failed to fulfill any other financial obligation to the derivatives clearing organization. The notice shall include:

(A) The name of the clearing member;

(B) The time the clearing member was contacted;

(C) The products that are subject to the determination;

(D) The number of positions for futures and options, and for swaps, the number of outstanding trades and notional amount, that are subject to the determination; and

(E) The reason for the determination.

(viii) *Default of a clearing member*. A derivatives clearing organization shall notify the Commission immediately of the default of a clearing member. An event of default shall be determined in accordance with the rules of the derivatives clearing organization. The notice of default shall include:

(A) The name of the clearing member;

(B) The products the clearing member defaulted upon;

(C) The number of positions for futures and options, and for swaps, the number of outstanding trades and notional amount, the clearing member defaulted upon; and

(D) The amount of the financial obligation.

(ix) *Change in ownership or corporate or organizational structure*—(A) *Reporting requirement*. A derivatives clearing organization shall report to the Commission any anticipated change in the ownership or corporate or organizational structure of the derivatives clearing organization or its parent(s) that would:

(*1*) Result in at least a 10 percent change of ownership of the derivatives clearing organization;

(*2*) Create a new subsidiary or eliminate a current subsidiary of the derivatives clearing organization; or

(*3*) Result in the transfer of all or substantially all of the assets of the derivatives clearing organization to another legal entity.

(B) *Required information*. The report shall include: a chart outlining the new ownership or corporate or organizational structure; a brief description of the purpose and impact of the change; and any relevant agreements effecting the change and corporate documents such as articles of incorporation and bylaws.

(C) *Time of report*. The report shall be submitted to the Commission no later than three months prior to the anticipated change, provided that the derivatives clearing organization may report the anticipated change to the Commission later than three months prior to the anticipated change if the derivatives clearing organization does not

know and reasonably could not have known of the anticipated change three months prior to the anticipated change. In such event, the derivatives clearing organization shall immediately report such change to the Commission as soon as it knows of such change.

(D) *Confirmation of change report.* The derivatives clearing organization shall report to the Commission the consummation of the change no later than two business days following the effective date of the change.

(x) *Change in key personnel*. A derivatives clearing organization shall report to the Commission no later than two business days following the departure or addition of persons who are key personnel as defined in § 39.2. The report shall include, as applicable, the name and contact information of the person who will assume the duties of the position permanently or the person who will assume the duties on a temporary basis until a permanent replacement fills the position.

(xi) *Change in legal name*. A derivatives clearing organization shall report to the Commission no later than two business days following a legal name change of the derivatives clearing organization.

(xii) *Change in credit facility funding arrangement*. A derivatives clearing organization shall report to the Commission no later than one business day after the derivatives clearing organization changes a credit facility funding arrangement it has in place, or is notified that such arrangement has changed, including but not limited to a change in lender, change in the size of the facility, change in expiration date, or any other material changes or conditions.

(xiii) *Change in liquidity funding arrangement*. A derivatives clearing organization shall report to the Commission no later than one business day after the

derivatives clearing organization changes a liquidity funding arrangement it has in place, or is notified that such arrangement has changed, including but not limited to a change in provider, change in the size of the facility, change in expiration date, or any other material changes or conditions.

(xiv) *Change in settlement bank arrangements*. A derivatives clearing organization shall report to the Commission no later than three business days after the derivatives clearing organization enters into a new relationship with, or terminates a relationship with, any settlement bank used by the derivatives clearing organization or approved for use by the derivatives clearing organization's clearing members.

(xv) *Settlement bank issues*. A derivatives clearing organization shall report to the Commission no later than one business day after any material issues or concerns arise regarding the performance, stability, liquidity, or financial resources of any settlement bank used by the derivatives clearing organization or approved for use by the derivatives clearing organization's clearing members.

(xvi) *Sanctions against a clearing member.* A derivatives clearing organization shall provide notice to the Commission no later than two business days after the derivatives clearing organization imposes sanctions against a clearing member.

(xvii) *Financial condition and events*. A derivatives clearing organization shall provide to the Commission immediate notice after the derivatives clearing organization knows or reasonably should have known of:

(A) The institution of any legal proceedings which may have a material adverse financial impact on the derivatives clearing organization;

(B) Any event, circumstance or situation that materially impedes the derivatives clearing organization's ability to comply with this part and is not otherwise required to be reported under this section; or

(C) A material adverse change in the financial condition of any clearing member that is not otherwise required to be reported under this section.

(xviii) *Financial statements material inadequacies*. A derivatives clearing organization shall provide notice to the Commission within 24 hours if the derivatives clearing organization discovers or is notified by an independent public accountant of the existence of any material inadequacy in a financial statement, and within 48 hours after giving such notice provide a written report stating what steps have been and are being taken to correct the material inadequacy.

(xix) *Change in fiscal year*. A derivatives clearing organization shall report to the Commission no later than two business days after any change to the start and end dates of its fiscal year.

(xx) *Change in independent accounting firm*. A derivatives clearing organization shall report to the Commission no later than 15 days after any change in the derivatives clearing organization's independent public accounting firm. The report shall include the date of such change, the name and contact information of the new firm, and the reason for the change.

(xxi) *Major decision of the board of directors*. A derivatives clearing organization shall report to the Commission any major decision of the derivatives clearing organization's board of directors as required by § 39.24(a)(3)(i).

(xxii) *System safeguards*. A derivatives clearing organization shall report to the Commission:

(A) Exceptional events as required by § 39.18(g); or

(B) Planned changes as required by § 39.18(h).

(xxiii) *Margin model issues*. A derivatives clearing organization shall report to the Commission no later than one business day after any issue occurs with a DCO's margin model, including margin models for cross-margined portfolios, that materially affects the DCO's ability to calculate or collect initial margin or variation margin.

(xxiv) *Recovery and wind-down plans*. A derivatives clearing organization that is required to maintain recovery and wind-down plans pursuant to § 39.39(b) shall submit its plans to the Commission no later than the date on which the derivatives clearing organization is required to have the plans. A derivatives clearing organization that is not required to maintain recovery and wind-down plans pursuant to § 39.39(b), but which nonetheless maintains such plans, may choose to submit its plans to the Commission. A derivatives clearing organization that has submitted its recovery and wind-down plans to the Commission shall, upon making any revisions to the plans, submit the revised plans to the Commission along with a description of the changes and the reason for those changes.

(5) *Requested reporting*. A derivatives clearing organization shall provide upon request by the Commission and within the time specified in the request:

(i) Any information related to its business as a clearing organization, including information relating to trade and clearing details.

(ii) A written demonstration, containing supporting data, information and documents, that the derivatives clearing organization is in compliance with one or more core principles and relevant provisions of this part.

19. In § 39.20, revise paragraphs (a) introductory text and (b)(2) to read as follows:

§ 39.20 Recordkeeping.

(a) *Requirement to maintain information*. A derivatives clearing organization shall maintain records of all activities related to its business as a derivatives clearing organization. Such records shall include, but are not limited to, records of:

* * * * *

(b) * * *

(2) *Exception for swap data*. A derivatives clearing organization that clears swaps must maintain swap data in accordance with the requirements of part 45 of this chapter.

20. Amend § 39.21 as follows:

a. Revise paragraphs (a), (b), (c) introductory text, and (c)(3) through (9); and

b. Remove paragraph (d).

The revisions read as follows:

§ 39.21 Public information.

(a) *General*. A derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization. In furtherance of the objective in this paragraph (a), a

derivatives clearing organization shall have clear and comprehensive rules and procedures.

(b) *Availability of information.* A derivatives clearing organization shall make information concerning the rules and the operating and default procedures governing the clearing and settlement systems of the derivatives clearing organization available to market participants.

(c) *Public disclosure.* A derivatives clearing organization shall make the following information readily available to the general public, in a timely manner, by posting such information on the derivatives clearing organization's Web site, unless otherwise permitted by the Commission:

* * * * *

(3) Information concerning its margin-setting methodology;

(4) The size and composition of the financial resource package available in the event of a clearing member default, updated as of the end of the most recent fiscal quarter or upon Commission request and posted as promptly as practicable after submission of the report to the Commission under § 39.11(f)(1)(i)(A);

(5) Daily settlement prices, volume, and open interest for each contract, agreement, or transaction cleared or settled by the derivatives clearing organization, posted no later than the business day following the day to which the information pertains;

(6) The derivatives clearing organization's rulebook, including rules and procedures for defaults in accordance with § 39.16;

(7) A current list of all clearing members;

(8) A list of all swaps that the derivatives clearing organization will accept for clearing that identifies which swaps on the list are required to be cleared, in accordance with § 50.3(a) of this chapter; and

(9) Any other information that is relevant to participation in the clearing and settlement activities of the derivatives clearing organization.

21. Revise § 39.22 to read as follows:

§ 39.22 Information sharing.

A derivatives clearing organization shall enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement, and shall use relevant information obtained from each such agreement in carrying out the risk management program of the derivatives clearing organization.

22. Add § 39.24 to read as follows:

§ 39.24 Governance.

(a) *General*. (1) A derivatives clearing organization shall have governance arrangements that:

(i) Are written;

(ii) Are clear and transparent;

(iii) Place a high priority on the safety and efficiency of the derivatives clearing organization; and

(iv) Explicitly support the stability of the broader financial system and other relevant public interest considerations of clearing members, customers of clearing members, and other relevant stakeholders.

(2) The board of directors shall make certain that the derivatives clearing organization's design, rules, overall strategy, and major decisions appropriately reflect the legitimate interests of clearing members, customers of clearing members, and other relevant stakeholders.

(3) To the extent consistent with other statutory and regulatory requirements on confidentiality and disclosure:

(i) Major decisions of the board of directors shall be clearly disclosed to clearing members, other relevant stakeholders, and to the Commission; and

(ii) Major decisions of the board of directors having a broad market impact shall be clearly disclosed to the public.

(b) *Governance arrangement requirements*. A derivatives clearing organization shall have governance arrangements that:

(1) Are clear and documented;

(2) To an extent consistent with other statutory and regulatory requirements on confidentiality and disclosure, are disclosed, as appropriate, to the Commission, other relevant authorities, clearing members, customers of clearing members, owners of the derivatives clearing organization, and to the public;

(3) Describe the structure pursuant to which the board of directors, committees, and management operate;

(4) Include clear and direct lines of responsibility and accountability;

(5) Clearly specify the roles and responsibilities of the board of directors and its committees, including the establishment of a clear and documented risk management framework;

(6) Clearly specify the roles and responsibilities of management;

(7) Describe procedures pursuant to which the board of directors oversees the chief risk officer, risk management committee, and material risk decisions;

(8) Provide risk management and internal control personnel with sufficient independence, authority, resources, and access to the board of directors so that the operations of the derivatives clearing organization are consistent with the risk management framework established by the board of directors;

(9) Assign responsibility and accountability for risk decisions, including in crises and emergencies; and

(10) Assign responsibility for implementing the:

(i) Default rules and procedures required by §§ 39.16 and 39.35, as applicable;

(ii) System safeguard rules and procedures required by §§ 39.18 and 39.34, as applicable; and

(iii) Recovery and wind-down plans required by § 39.39, as applicable.

(c) *Fitness standards*. (1) A derivatives clearing organization shall establish and enforce appropriate fitness standards for:

(i) Directors;

(ii) Members of any disciplinary committee;

(iii) Members of the derivatives clearing organization;

(iv) Any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and

(v) Any other party affiliated with any individual or entity described in this paragraph.

(2) A derivatives clearing organization shall maintain policies to make certain that:

(i) The board of directors consists of suitable individuals having appropriate skills and incentives;

(ii) The performance of the board of directors and the performance of individual directors is reviewed on a regular basis; and

(iii) Managers have the appropriate experience, skills, and integrity necessary to discharge operational and risk management responsibilities.

23. Add § 39.25 to read as follows:

§ 39.25 Conflicts of interest.

A derivatives clearing organization shall:

(a) Establish and enforce rules to minimize conflicts of interest in the decision-making process of the derivatives clearing organization;

(b) Establish a process for resolving such conflicts of interest; and

(c) Describe procedures for identifying, addressing, and managing conflicts of interest involving members of the board of directors.

24. Add § 39.26 to read as follows:

§ 39.26 Composition of governing boards.

A derivatives clearing organization shall ensure that the composition of the governing board or board-level committee of the derivatives clearing organization includes market participants and individuals who are not executives, officers, or employees of the derivatives clearing organization or an affiliate thereof.

25. In § 39.27, revise paragraph (c)(3) to read as follows:

§ 39.27 Legal risk considerations.

* * * * *

(c) * * *

(3) The derivatives clearing organization shall ensure on an ongoing basis that the memorandum required in paragraph (b) of Exhibit R to appendix A to this part is accurate and up to date and shall submit an updated memorandum to the Commission promptly following all material changes to the analysis or content contained in the memorandum.

26. Remove and reserve § 39.32.

§ 39.32 [Removed and Reserved]

27. In § 39.33, revise paragraphs (a)(1) and (c)(1)(i), and add paragraph (d)(5) to read as follows:

§ 39.33 Financial resources requirements for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

(a) * * *

(1) Notwithstanding the requirements of § 39.11(a)(1), each systemically important derivatives clearing organization and subpart C derivatives clearing organization that, in either case, is systemically important in multiple jurisdictions or is involved in activities with a more complex risk profile shall maintain financial resources sufficient to enable it to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined financial exposure to the derivatives clearing organization in extreme but plausible market conditions.

* * * * *

(c) * * *

(1) * * *

(i) Notwithstanding the provisions of § 39.11(e)(1)(ii), each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall maintain eligible liquidity resources, in all relevant currencies, that, at a minimum, will enable it to meet its intraday, same-day, and multiday obligations to perform settlements, as defined in § 39.14(a)(1), with a high degree of confidence under a wide range of stress scenarios that should include, but not be limited to, a default by the clearing member creating the largest aggregate liquidity obligation for the systemically important derivatives clearing organization or subpart C derivatives clearing organization in extreme but plausible market conditions.

* * * * *

(d) * * *

(5) A systemically important derivatives clearing organization with access to accounts and services at a Federal Reserve Bank, pursuant to section 806(a) of the Dodd-Frank Act, 12 U.S.C. 5465(a), shall use such accounts and services where practical.

* * * * *

28. In § 39.36, revise paragraphs (a)(5)(ii), (a)(6), (b)(2)(ii), (d) and (e) to read as follows:

§ 39.36 Risk management for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

(a) * * *

(5) * * *

(ii) Using the results to assess the adequacy of, and to adjust, its total amount of financial resources; and

(6) Use the results of stress tests to support compliance with the minimum financial resources requirement set forth in § 39.11(a)(1) or § 39.33(a), as applicable.

(b) * * *

(2) * * *

(ii) Testing of the ability of the models or model components to react appropriately using actual or hypothetical datasets and assessing the impact of different model parameter settings.

* * * * *

(d) *Margin model assessment.* Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall conduct, on at least an annual basis (or more frequently if there are material relevant market developments), an assessment of the theoretical and empirical properties of its margin model for all products it clears.

(e) *Independent validation*. Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall perform, on an annual basis, a full validation of its financial risk management model and its liquidity risk management model.

* * * * *

29. In § 39.37, revise paragraphs (b) and (c) to read as follows:

§ 39.37 Additional disclosure for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

* * * * *

(b)(1) Review and update its responses disclosed as required by paragraph (a) of this section at least every two years and following material changes to the systemically important derivatives clearing organization's or subpart C derivatives clearing organization's system or the environment in which it operates. A material change to the systemically important derivatives clearing organization's or subpart C derivatives clearing organization's system or the environment in which it operates is a change that would significantly change the accuracy and usefulness of the existing responses; and

(2) Provide notice to the Commission of updates to its responses required by paragraph (b)(1) of this section following material changes no later than ten business days after the updates are made. Such notice shall be accompanied by a copy of the text of the responses that shows all deletions and additions made to the immediately preceding version of the responses;

(c) Disclose, publicly and to the Commission, relevant basic data on transaction volume and values consistent with the standards set forth in the Public Quantitative Disclosure Standards for Central Counterparties published by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions;

* * * * *

30. In § 39.39, revise paragraph (a)(2) to read as follows:

§ 39.39 Recovery and wind-down for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

(a) * * *

(2) *Wind-down* means the actions of a systemically important derivatives clearing organization or subpart C derivatives clearing organization to effect the permanent cessation or sale or transfer of one or more services.

* * * * *

31. Revise Appendix A to part 39 to read as follows:

Appendix A to Part 39—Form DCO Derivatives Clearing Organization Application for Registration

OMB No. 3038-0076

COMMODITY FUTURES TRADING COMMISSION

FORM DCO

DERIVATIVES CLEARING ORGANIZATION
APPLICATION FOR REGISTRATION

GENERAL INSTRUCTIONS

Intentional misstatements or omissions of fact may constitute federal criminal violations (7 U.S.C. 13 and 18 U.S.C. 1001) or grounds for disqualification from registration.

DEFINITIONS

Unless the context requires otherwise, all terms used in this Form DCO have the same meaning as in the Commodity Exchange Act ("Act"), and in the General Rules and Regulations of the Commodity Futures Trading Commission ("Commission") thereunder. All references to Commission regulations are found at 17 CFR Ch. I.

For the purposes of this Form DCO, the term "Applicant" shall include any applicant for registration as a derivatives clearing organization.

GENERAL INSTRUCTIONS

1. This Form DCO, which includes a Cover Sheet and required Exhibits (together, "Form DCO" or "application"), is to be filed with the Commission by all applicants for registration as a derivatives clearing organization, including applicants when amending a pending application, pursuant to Section 5b of the Act and the Commission's regulations thereunder. Upon the filing of an application for registration or an amendment to an application in accordance with the instructions provided herein, the Commission will publish notice of the filing and afford interested persons an opportunity to submit written data, views and comments concerning such application. No application for registration will be effective unless the Commission, by order, grants such registration.

2. Individuals' names, except the executing signature, shall be given in full (Last Name, First Name, Middle Name).

3. With respect to the executing signature, it must be manually signed by a duly authorized representative of the Applicant as follows: If the Form DCO is filed by a corporation, it must be signed in the name of the corporation by a principal officer duly authorized; if filed by a limited liability company, it must be signed in the name of the limited liability company by a manager or member duly authorized to sign on the limited liability company's behalf; if filed by a partnership, it must be signed in the name of the partnership by a general partner duly authorized; if filed by an unincorporated organization or association which is not a partnership, it must be signed in the name of such organization or association by the managing agent, *i.e.*, a duly authorized person who directs or manages or who participates in the directing or managing of its affairs.

4. If this Form DCO is being filed as an application for registration, all applicable items must be answered in full. If any item or Exhibit is inapplicable, this response must be affirmatively indicated by the designation "none," "not applicable," or "N/A," as appropriate.

5. Under section 5b of the Act and the Commission's regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this Form DCO from any Applicant seeking registration as a derivatives clearing organization and from any registered derivatives clearing organization. Disclosure by the Applicant of the information specified in this Form DCO is mandatory prior to the start of the processing of an application for registration as a derivatives clearing

organization. The information provided in this Form DCO will be used for the principal purpose of determining whether the Commission should grant or deny registration to an Applicant.

The Commission may determine that additional information is required from the Applicant in order to process its application. An Applicant is therefore encouraged to supplement this Form DCO with any additional information that may be significant to its operation as a derivatives clearing organization and to the Commission's review of its application. A Form DCO which is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Form DCO, however, shall not constitute a finding that the Form DCO has been filed as required or that the information submitted is true, current or complete.

6. As provided in 17 CFR 39.3(a)(5), except in cases where the Applicant submits a request for confidential treatment with the Secretary of the Commission pursuant to the Freedom of Information Act and 17 CFR 145.9, information supplied in this application will be included routinely in the public files of the Commission and will be available for inspection by any interested person.

APPLICATION AMENDMENTS

1. 17 CFR 39.3(a)(4) requires an Applicant to promptly amend its application if it discovers a material omission or error in the application, or if there is a material change in the information contained in the application, including any supplement or amendment thereto.
2. Applicants, when filing this Form DCO for purposes of amending a pending application, must re-file an entire Cover Sheet, amended if necessary and including an executing signature, and attach thereto revised Exhibits or other materials marked to show changes, as applicable. The submission of an amendment to a pending application represents that the remaining items and Exhibits that are not amended remain true, current, and complete as previously filed.

WHERE TO FILE

This Form DCO must be filed with the Commission in the format and manner specified by the Commission.

COMMODITY FUTURES TRADING COMMISSION

FORM DCO
DERIVATIVES CLEARING ORGANIZATION
APPLICATION FOR REGISTRATION

COVER SHEET

_____

Exact name of Applicant as specified in charter

_____

Address of principal executive offices

☐ If this is an **APPLICATION** for registration, complete in full and check here.

☐ If this is an **AMENDMENT** to a pending application, list below all items that are being amended and check here.

_____

_____

_____

_____

GENERAL INFORMATION

1. Name under which business is or will be conducted, if different than name specified above (include acronyms, if any):

_____

2. If name of derivatives clearing organization is being amended, state previous derivatives clearing organization name:

_____

3. Additional contact information:

_____

Website URL Main Phone Number

4. List of principal office(s) and address(es) where derivatives clearing organization activities are/will be conducted:

Office Address

_____ _____

_____ _____

_____ _____

_____ _____

BUSINESS ORGANIZATION

5. If Applicant is a successor to a previously registered derivatives clearing organization, please complete the following:

   a. Date of succession _____

   b. Full name and address of predecessor registrant

   _____
   Name

   _____
   Street Address

   _____
   City State Country Zip Code

6. Applicant is a:

☐ Corporation

☐ Partnership (specify whether general or limited)

☐ Limited Liability Company

☐ Other form of organization (specify) _____

7. Date of formation: _____

8. Jurisdiction of organization: _____

   List all other jurisdictions in which Applicant is qualified to do business (including non-US jurisdictions):

_____

_____

List all other regulatory licenses or registrations of Applicant (or exemptions from any licensing requirement) including with non-US regulators:

_____

_____

9. FEIN or other Tax ID#: _____

10. Fiscal Year End: _____

ADDITIONAL CONTACT INFORMATION

11. Provide contact information specifying name, title, phone numbers, mailing address and e-mail address for the following individuals:

a. The primary contact for questions and correspondence regarding the application

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

b. The individual responsible for handling questions regarding the Applicant's financial statements

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

c. The individual responsible for serving as the Chief Risk Officer of the Applicant pursuant to § 39.13 of the Commission's regulations

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

d. The individual responsible for serving as the Chief Compliance Officer of the Applicant pursuant to § 39.10 of the Commission's regulations

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

e.

The individual responsible for serving as the chief legal officer of the Applicant

_____

Name and Title

_____

Office Phone Number Mobile Phone Number

_____

Mailing address E-mail Address

12. Outside Service Providers: Provide contact information specifying name, title, phone numbers, mailing address and e-mail address for any outside service provider retained by the Applicant as follows:

a. Certified Public Accountant

_____

Name and Title

_____

Office Phone Number Mobile Phone Number

_____

Mailing address E-mail Address

b. Legal Counsel

_____

Name and Title

_____

Office Phone Number Mobile Phone Number

_____

Mailing address E-mail Address

c. Records Storage or Management

_____

Name and Title

_____

Office Phone Number Mobile Phone Number

_____

Mailing address E-mail Address

d. Business Continuity/Disaster Recovery

_____

Name and Title

_____

Office Phone Number Mobile Phone Number

_____

Mailing address E-mail Address

e. Professional consultants providing services related to this application

_____

Name and Title

_____

Office Phone Number Mobile Phone Number

_____

Mailing address E-mail Address

13. Applicant agrees and consents that the notice of any proceeding before the Commission in connection with this application may be given by sending such notice by certified mail to the person named below at the address given.

_____

Print Name and Title

_____

Street Address

_____

City State Country Zip Code

SIGNATURE/REPRESENTATION

14. Applicant has duly caused this application to be signed on its behalf by its duly authorized representative as of the _____ day of _____, 20_____. Applicant and the undersigned each represent hereby that, to the best of their knowledge, all information contained herein is true, current and complete in all material respects. It is understood that all required items and Exhibits are considered integral parts of this Form DCO and that the submission of any amendment represents that all unamended items and Exhibits remain true, current, and complete as previously filed.

_____

Name of Applicant

By:_____

Manual Signature of Duly Authorized Person

_____

Print Name and Title of Signatory

COMMODITY FUTURES TRADING COMMISSION

FORM DCO

DERIVATIVES CLEARING ORGANIZATION
APPLICATION FOR REGISTRATION

EXHIBIT INSTRUCTIONS

1. The following Exhibits must be filed with the Commission by each Applicant seeking registration as a derivatives clearing organization pursuant to section 5b of the Act and the Commission's regulations thereunder.

2. The application must include a Table of Contents listing each Exhibit required by this Form DCO and indicating which, if any, Exhibits are inapplicable. For any Exhibit that is inapplicable, next to the Exhibit letter specify "none," "not applicable," or "N/A," as appropriate.

3. The Exhibits must be labeled as specified in this Form DCO. If any Exhibit requires information that is related to, or may be duplicative of, information required to be included in another Exhibit, Applicant may summarize such information and provide a cross-reference to the Exhibit that contains the required information.

4. If the information required in an Exhibit involves computerized programs or systems, Applicant must submit descriptions of system test procedures, tests conducted, or test results in sufficient detail to demonstrate the Applicant's ability to comply with the core principles specified in section 5b of the Act and the Commission's regulations thereunder (the "Core Principles"). With respect to each system test, Applicant must identify the methodology used and provide the computer software, programs, and data necessary to enable the Commission to duplicate each system test as it relates to the applicable Core Principle.

5. If Applicant seeks confidential treatment of any Exhibit or a portion of any Exhibit, Applicant must mark such Exhibit with a prominent stamp, typed legend, or other suitable form of notice on each page or portion of each page stating "Confidential Treatment Requested by [Applicant]." If such marking is impractical under the circumstances, a cover sheet prominently marked "Confidential Treatment Requested by [Applicant]" should be provided for each group of records submitted for which confidential treatment is requested. Each of the records transmitted in this matter shall be individually marked with an identifying number and code so that they are separately identifiable. Applicant must also file a confidentiality request with the Secretary of the Commission in accordance with 17 CFR 145.9.

DESCRIPTION OF EXHIBITS

EXHIBIT A — GENERAL INFORMATION/COMPLIANCE

- Attach as **Exhibit A-1**, a regulatory compliance chart setting forth each Core Principle and providing citations to the Applicant's relevant rules, policies, and procedures that address each Core Principle, and a brief summary of the manner in which Applicant will comply with each Core Principle.

- Attach as **Exhibit A-2**, a copy of Applicant's rulebook. The rulebook must consist of all the rules necessary to carry out Applicant's role as a derivatives clearing organization. Applicant must certify that its rules constitute a binding agreement between Applicant and its clearing members and, in addition to any separate clearing member agreements, establish rights and obligations between Applicant and its clearing members.

- Attach as **Exhibit A-3**, a narrative summary of Applicant's proposed clearing activities including (i) the anticipated start date of clearing products (or, if Applicant is already clearing products, the anticipated start date of activities for which Applicant is seeking an amendment to its registration), and (ii) a description of the scope of Applicant's proposed clearing activities (*e.g.*, clearing for a designated contract market; clearing for a swap execution facility; clearing bilaterally executed products).

- Attach as **Exhibit A-4**, a detailed business plan setting forth, at a minimum, the nature of and rationale for Applicant's activities as a derivatives clearing organization, the context in which it is beginning or expanding its activities, and the nature, terms, and conditions of the products it will clear.

- Attach as **Exhibit A-5**, a list of the names of any person (i) who owns 5% or more of Applicant's stock or other ownership or equity interests; or (ii) who, either directly or indirectly, through agreement or otherwise, may control or direct the management or policies of Applicant. Provide as part of **Exhibit A-5** the full name and address of each such person, indicate the person's ownership percentage, and attach a copy of the agreement or, if there is no agreement, an explanation of the basis upon which such person exercises or may exercise such control or direction.

- Attach as **Exhibit A-6**, a list of Applicant's current officers, directors, governors, general partners, LLC managers, and members of all standing committees, as applicable, or persons performing functions similar to any of the foregoing, indicating for each:

    a. Name and Title (with respect to a director, such title must include participation on any committee of Applicant);

    b. Dates of commencement and, if appropriate, termination of present term of office or position;

    c. Length of time each such person has held the same office or position;

    d. Brief description of the business experience of each person over the last ten years;

    e. Any other current business affiliations in the financial services industry;

    f. If such person is not an employee of Applicant, list any compensation paid to the person as a result of his or her position at Applicant. For a director, describe any performance-based compensation;

    g. A certification for each such person that the individual would not be disqualified under section 8a(2) of the Act or § 1.63; and

h. With respect to a director, indicate whether such director is an independent director, and whether such director is a market participant, and the basis for such a determination as to the director's status.

If another entity will operate or control the day-to-day business operations of the Applicant, attach for such entity all of the items indicated in **Exhibit A-6**.

- Attach as **Exhibit A-7**, a diagram of the entire corporate organizational structure of Applicant including the legal name of all entities within the organizational structure and the applicable percentage ownership among affiliated entities. Additionally, provide (i) a list of all jurisdictions in which Applicant or its affiliated entities are doing business; (ii) the registration status of Applicant and its affiliated entities, including pending applications or exemption requests and whether any applications or exemptions have been denied (*e.g.*, country, regulator, registration category, date of registration or request for exemption, date of denial, if applicable); and (iii) the address for legal service of process for Applicant (which cannot be a post office box) for each applicable jurisdiction.

- Attach as **Exhibit A-8**, a copy of the constituent documents, articles of incorporation or association with all amendments thereto, partnership or limited liability agreements, and existing bylaws, operating agreement, or instruments corresponding thereto, of Applicant. Provide a certificate of good standing or its equivalent for Applicant for each jurisdiction in which Applicant is doing business, including any foreign jurisdiction, dated within one month of the date of the Form DCO.

- Attach as **Exhibit A-9**, a brief description of any material pending legal proceeding(s) or governmental investigation(s) to which Applicant or any of its affiliates is a party or is subject, or to which any of its or their property is at issue. Include the name of the court or agency where the proceeding(s) is pending, the date(s) instituted, the principal parties involved, a description of the factual allegations in the complaint(s), the laws that were allegedly violated, and the relief sought. Include similar information as to any such proceeding(s) or any investigation known to be contemplated by any governmental agency.

- If Applicant intends to use the services of an outside service provider (including services of its clearing members or market participants), to enable Applicant to comply with any of the Core Principles, Applicant must submit as **Exhibit A-10** all agreements entered into or to be entered into between Applicant and the outside service provider, and identify (1) the services that will be provided; (2) the staff of the outside service provider who will provide the services (specifying (i) in which department or unit of the outside service provider they are employed, (ii) title, and (iii) if known, level of expertise); and (3) the Core Principles addressed by such arrangement. Each submitted agreement must include all attachments cited therein. If a submitted agreement is not final and executed, the Applicant must submit evidence that constitutes reasonable assurance that such services will be provided as soon as operations require.

- Attach as Exhibit **A-11**, documentation that demonstrates compliance with the Chief Compliance Officer ("CCO") requirements set forth in § 39.10(c), including but not limited to:

    a. Evidence of the designation of an individual to serve as Applicant's CCO with full responsibility and authority to develop and enforce appropriate compliance policies and procedures;

    b. A description of the background and skills of the person designated as the CCO and a certification that the individual would not be disqualified under section 8a(2) or 8a(3) of the Act;

    c. Identification of to whom the CCO reports (*i.e.*, the senior officer of the derivatives clearing organization, the senior officer responsible for the derivative clearing organization's clearing activities, or the Board of Directors of the derivatives clearing organization);

d. Any plan of communication or regular or special meetings between the CCO and the Board of Directors or senior officer as appropriate;

e. A job description setting forth the CCO's duties;

f. Procedures for the remediation of noncompliance issues; and

g. A copy of Applicant's written compliance policies and procedures (including a code of ethics and conflict of interest policy).

- Attach as Exhibit **A-12**, a description of Applicant's enterprise risk management program, and how it complies with the requirements set forth in § 39.10(d).

EXHIBIT B — FINANCIAL RESOURCES

- Attach as **Exhibit B**, documents that demonstrate compliance with the financial resources requirements set forth in § 39.11 of the Commission's regulations, including but not limited to:

a. General – Provide as **Exhibit B-1**:

(1) The most recent year-end audited financial statements of Applicant calculated in accordance with U.S. generally accepted accounting principles ("U.S. GAAP"), including the balance sheet, income statement, statement of cash flows, notes to the financial statements, and an independent auditor's report issued by a certified public accountant, dated as of the end of Applicant's last fiscal year-end prior to the date of filing the Form DCO. If Applicant does not have its own year-end audited financial statements, it may submit the audited financial statements of its direct parent company, dated as of the end of the direct parent company's last fiscal year-end prior to the date of filing the Form DCO. Applicant should be aware that once it is registered as a derivatives clearing organization it must submit its own year-end audited financial statements, as required by § 39.11(f)(2)(i), and the cost of such audit must be included in Applicant's calculation of its total projected operating costs in Exhibit B-3, as described in paragraph c(5) below;

(2) If Applicant is unable to submit a copy of its own audited financial statements or the audited financial statements of its direct parent company, as required by paragraph a(1) above, Applicant must provide its year-end financial statements calculated in accordance with U.S. GAAP, including the balance sheet, income statement, statement of cash flows, and notes to the financial statements, dated as of the end of Applicant's last fiscal year-end prior to the date of filing the Form DCO. These year-end financial statements must be accompanied by an independent accountant's review report issued by a certified public accountant;

(3) If the audited or reviewed financial statements submitted in accordance with either paragraph a(1) or paragraph a(2) above are not dated as of the end of Applicant's last fiscal quarter prior to the date of filing the Form DCO, Applicant must also provide a set of Applicant's quarterly unaudited financial statements, dated as of the end of Applicant's last fiscal quarter prior to the date of filing the Form DCO;

(4) If Applicant is incorporated or organized under the laws of any foreign country, it may submit the financial statements described above prepared in accordance with either U.S.GAAP or the International Financial Reporting Standards ("IFRS") issued by the International Accounting Standards Board. Applicant should be aware that once it is registered as a derivatives clearing

organization it must submit financial statements prepared in accordance with U.S. GAAP or IFRS, as required by § 39.11(f)(1) and (f)(2);

(5) If Applicant is a start-up or will commence operations after it is registered as a derivatives clearing organization, Applicant must submit a set of pro-forma financial statements, including the balance sheet, income statement, and statement of cash flows, dated as of the first month-end after Applicant's expected start date. The set of pro-forma statements must include a narrative description of how the estimates were determined;

(6) A narrative description of how Applicant will fund its financial resources obligations on the first day of its operation as a registered derivatives clearing organization; and

(7) Applicant must complete the form that is used by registered derivatives clearing organizations for quarterly reports under § 39.11(f)(1), as of the date of the most recent financial statements provided in Exhibit B-1. If Applicant is a start-up, Applicant must complete the form using estimated figures and must provide a narrative description of how the estimates were determined. The Division of Clearing and Risk will provide the current form to Applicant, upon request.

b. Default Resources – Provide as **Exhibit B-2**:

(1) A calculation of the financial resources needed to enable Applicant to meet its requirements under § 39.11(a)(1), as of the date of the most recent financial statements provided in Exhibit B-1. Applicant must provide hypothetical default scenarios designed to reflect a variety of market conditions, and the assumptions and variables underlying the scenarios must be explained. All results of the analysis must be included. This calculation requires a start-up enterprise to estimate its largest anticipated financial exposure and explain the basis for such estimate;

(2) Evidence of unencumbered assets sufficient to satisfy § 39.11(a)(1), as of the date of the most recent financial statements provided in Exhibit B-1. For example, this may be demonstrated by audited financial statements or a copy of a bank balance statement(s), custodian statement(s), or statement(s) from any other institution holding such assets for each type of financial resource. A start-up enterprise may not make this demonstration through audited financial statements. If relying on § 39.11(b)(1)(v), such other resources must be thoroughly explained. If Applicant intends to use a committed line of credit or similar facility to meet the liquidity requirement pursuant to § 39.11(e)(1)(iii), Applicant must provide a copy of the applicable credit agreement(s). If relying on § 39.11(b)(1)(i) and/or (v), Applicant cannot also count these assets when demonstrating its compliance with its operating resources requirement under § 39.11(a)(2) and Applicant must detail the amounts or percentages of such assets that apply to each financial resource requirement;

(3) A demonstration that Applicant can perform the monthly calculations required by § 39.11(c)(1);

(4) A demonstration that Applicant's financial resources are sufficiently liquid as required by § 39.11(e)(1), as of the date of the most recent financial statements provided in Exhibit B-1;

(5) A demonstration of how Applicant will be able to maintain, at all times, the level of resources required by § 39.11(a)(1); and

(6) A demonstration of how default resources financial information will be updated and reported to clearing members and the public under § 39.21, and to the Commission as required by § 39.11(f)(1) and § 39.19.

c. Operating Resources – Provide as **Exhibit B-3**:

(1) A calculation of the financial resources needed to enable Applicant to meet its requirements under § 39.11(a)(2), as of the date of the most recent financial statements provided in Exhibit B-1;

(2) Evidence of assets sufficient to satisfy the amount required under § 39.11(a)(2), as of the date of the most recent financial statements provided in Exhibit B-1. For example, this may be demonstrated by audited financial statements or a copy of a bank balance statement(s), custodian statement(s), or statement(s) from any other institution holding such assets, in the name of Applicant, for each type of financial resource. A start-up enterprise may not make this demonstration through audited financial statements. If relying on § 39.11(b)(2)(ii), such other resources must be thoroughly explained. If Applicant intends to use a committed line of credit or similar facility to meet the liquidity requirement pursuant to § 39.11(e)(2), Applicant must provide a copy of the applicable credit agreement(s). If relying on § 39.11(b)(2)(i) or (ii), Applicant cannot also count these assets when demonstrating its compliance with meeting its default resources requirement under § 39.11(a)(1) and Applicant must detail the amounts or percentages of such assets that apply to each financial resource requirement;

(3) A narrative statement demonstrating the adequacy of Applicant's physical infrastructure to carry out business operations, which includes a principal executive office (separate from any personal dwelling) with a street address (not merely a post office box number). For its principal executive office and other facilities Applicant plans to occupy in carrying out its functions as a derivatives clearing organization, a description of the space (*e.g.*, location and square footage), use of the space (*e.g.*, executive office, data center), and the basis for Applicant's right to occupy the space (*e.g.*, lease, agreement with parent company to share leased space);

(4) A narrative statement demonstrating the adequacy of the technological systems necessary to carry out Applicant's business operations, including a description of Applicant's information technology and telecommunications systems and a timetable for full operability;

(5) A calculation pursuant to § 39.11(c)(2), including the total projected operating costs for Applicant's first year of operation as a derivatives clearing organization, calculated on a monthly basis with an explanation of the basis for calculating each cost and a discussion of the type, nature, and number of the various costs included;

(6) A demonstration that Applicant's financial resources are sufficiently liquid and unencumbered, as required by § 39.11(e)(2), as of the date of the most recent financial statements provided in Exhibit B-1;

(7) A demonstration of how Applicant will maintain, at all times, the level of resources required by § 39.11(a)(2) with an explanation of asset valuation methodology and calculation of projected revenue, if applicable; and

(8) A demonstration of how financial information for operating resources will be updated and reported to clearing members and the public under § 39.21, and to the Commission as required by § 39.11(f)(1) and § 39.19.

d. Human Resources – Provide as **Exhibit B-4**:

(1) An organizational chart showing Applicant's current and planned staff by position and title, including key personnel (as such term is defined in § 39.2) and, if applicable, managerial staff reporting to key personnel.

(2) A discussion and description of the staffing requirements needed to fulfill all operations and associated functions, tasks, services, and areas of supervision necessary to operate Applicant on a day-to-day basis; and

(3) The names and qualifications of individuals who are key personnel or other managerial staff who will carry out the operations and associated functions, tasks, services, and supervision needed to run the Applicant on day-to-day basis. In particular, Applicant must identify such individuals who are responsible for risk management, treasury, clearing operations and compliance (and specify whether each such person is an employee or consultant/agent).

EXHIBIT C — PARTICIPANT AND PRODUCT ELIGIBILITY

- Attach as **Exhibit C**, documents that demonstrate compliance with the participant and product eligibility requirements set forth in § 39.12 of the Commission's regulations, including but not limited to:

a. Participant Eligibility – Provide as **Exhibit C-1**, an explanation of the requirements for becoming a clearing member and how those requirements satisfy § 39.12 and, where applicable, support Applicant's compliance with other Core Principles. Applicant must address how its participant eligibility requirements comply with the core principles and regulations thereunder for financial resources, risk management, and operational capacity. The explanation also must include:

(1) A final version of the membership agreement between Applicant and its clearing members that sets forth the full scope of respective rights and obligations;

(2) A discussion of how Applicant will monitor for and enforce compliance with its eligibility criteria, especially minimum financial requirements;

(3) An explanation of how the eligibility criteria are objective and allow for fair and open access to Applicant. Applicant must include an explanation of the differences between various classes of membership or participation that might be based on different levels of capital and/or creditworthiness. Applicant must also include information about whether any differences exist in how Applicant will monitor and enforce the obligations of its various clearing members including any differences in access, privilege, margin levels, position limits, or other controls;

(4) If Applicant allows intermediation, Applicant must describe the requirements applicable to those who may act as intermediaries on behalf of customers or other market participants;

(5) A description of the program for monitoring the financial status of the clearing members on an ongoing basis;

(6) The procedures that Applicant will follow in the event of the bankruptcy or insolvency of a clearing member, which did not result in a default to Applicant;

(7) A description of whether and how Applicant would adjust clearing member participation under continuing eligibility criteria based on the financial, risk, or operational status of a clearing member;

(8) A discussion of whether Applicant's clearing members will be required to be registered with the Commission; and

(9) A list of current or prospective clearing members. If a current or prospective clearing member is a Commission registrant, Applicant must identify the member's designated self-regulatory organization.

b. Product Eligibility – Provide as **Exhibit C-2**, an explanation of the criteria used to determine the eligibility of products submitted for clearing, including:

(1) The regulatory status of each market on which a contract to be cleared by Applicant is traded (*e.g.*, designated contract market, swap execution facility, not a registered market), and whether the market for which Applicant clears intends to join the Joint Audit Committee. For bilaterally executed agreements, contracts, or transactions not traded on a registered market, Applicant must describe the nature of the related market and its interest in having the particular bilaterally executed agreement, contract, or transaction cleared;

(2) The criteria, and the factors considered in establishing the criteria, for determining the types of products that will be cleared;

(3) An explanation of how the criteria for deciding what products to clear take into account the different risks inherent in clearing different agreements, contracts, or transactions and how those criteria affect maintenance of assets to support the guarantee function in varying risk environments;

(4) A precise list of all the agreements, contracts, or transactions to be covered by Applicant's registration order, including the terms and conditions of all agreements, contracts, or transactions;

(5) A forecast of expected volume and open interest at the outset of clearing operations as a derivatives clearing organization, after six months, and after one year of operation as a derivatives clearing organization; and

(6) The mechanics of clearing each contract, such as reliance on exchange for physical, exchange for swap, or other substitution activity; whether the contracts are matched prior to submission for clearing or after submission; and other aspects of clearing mechanics that are relevant to understanding the products that would be eligible for clearing.

EXHIBIT D — RISK MANAGEMENT

- Attach as **Exhibit D**, documents that demonstrate compliance with the risk management requirements set forth in § 39.13 of the Commission's regulations, including but not limited to:

a. Risk Management Framework – Provide as **Exhibit D-1**, a copy of Applicant's written policies, procedures, and controls, as approved by Applicant's Board of

Directors, that establish Applicant's risk management framework as required by § 39.13(b). Applicant must also provide a description of the composition and responsibilities of Applicant's Risk Management Committee.

b. Measuring Risk – Provide as **Exhibit D-2**, a narrative explanation of how Applicant has projected and will continue to measure its counterparty risk exposure, including:

(1) A description of the risk-based margin calculation methodology;

(2) The assumptions upon which the methodology was designed, including the risk analysis tools and procedures employed in the design process;

(3) An explanation as to whether other margining methodologies were considered and, if so, why they were not chosen;

(4) A demonstration of the margin methodology as applied to real or hypothetical clearing scenarios;

(5) A description of the data sources for inputs used in the methodology, *e.g.*, historical price data reflecting market volatility over various periods of time;

(6) A description of the sources of price data for the measurement of current exposures and the valuation models for addressing circumstances where pricing data is not readily available or reliable;

(7) The frequency and circumstances under which the margin methodology will be reviewed and the criteria for deciding how often to review and whether to modify a margin methodology;

(8) An independent validation of Applicant's systems for generating initial margin requirements, including its theoretical models;

(9) The frequency of measuring counterparty risk exposures (mark to market), whether counterparty risk exposures are routinely measured on an intraday basis, whether Applicant has the operational capacity to measure counterparty risk exposures on an intraday basis, and the circumstances under which Applicant would conduct a non-routine intraday measurement of counterparty risk exposures;

(10) Preliminary forecasts regarding future counterparty risk exposure and assumptions upon which such forecasts of exposure are based;

(11) A description of any systems or software that Applicant will require clearing members to use in order to margin their positions in their internal bookkeeping systems, and whether and under what terms and conditions Applicant will provide such systems or software to clearing members; and

(12) A description of the extent to which counterparty risk can be offset through the clearing process (*i.e.*, the limitations, if any, on Applicant's duty to fulfill its obligations as the buyer to every seller and the seller to every buyer).

c. Limiting Risk – Provide as **Exhibit D-3**, a narrative discussion addressing the specifics of Applicant's clearing activities, including:

(1) How Applicant will collect financial information about its clearing members and other traders or market participants, monitor price movements, and mark to market, on a daily basis, the products and/or portfolios it clears;

(2) How Applicant will monitor accounts carried by clearing members, the accumulation of positions by clearing members and other market participants, and compliance with risk limits; and how it will use large trader information;

(3) How Applicant will determine variation margin levels and outstanding initial margin due;

(4) How Applicant will identify unusually large pays on a proactive basis before they occur;

(5) Whether and how Applicant will compare price moves and position information to historical patterns and to the financial information collected from its clearing members; and how it will identify unusually large pays on a daily basis;

(6) How Applicant will use various risk tools and procedures such as: (i) value-at-risk calculations; (ii) stress testing; (iii) back testing; and/or (iv) other risk management tools and procedures. If Applicant is currently clearing products for which it is seeking registration as a derivatives clearing organization, provide back testing results for actual portfolios containing each such product, which demonstrate margin coverage at least at the 99 percent confidence level over the previous 252 trading days;

(7) How Applicant will communicate with clearing members, settlement banks, other derivatives clearing organizations, designated contract markets, swap execution facilities, major swap participants, swap data repositories, and other entities in emergency situations or circumstances that might require immediate action by the Applicant;

(8) How Applicant will monitor risk outside of its business hours;

(9) How Applicant will review its clearing members' risk management practices;

(10) Whether Applicant will impose credit limits and/or employ other risk filters (such as automatic system denial of entry of trades under certain conditions);

(11) Plans for handling "extreme market volatility" and how Applicant defines that term;

(12) An explanation of how Applicant will be able to offset positions in order to manage risk including: (i) ensuring both Applicant and clearing members have the operational capacity to do so; and (ii) liquidity of the relevant market, especially with regard to bilaterally executed products;

(13) Plans for managing accounts that are "too big" to liquidate and for conducting "what if" analyses on these accounts;

(14) If options are involved, how Applicant will manage the different and more complex risk presented by these products;

(15) If Applicant intends to clear swaps, whether and how often Applicant will offer multilateral portfolio compression exercises for its clearing members; and

(16) If Applicant intends to clear credit default swaps, credit default futures, and any derivatives that reference either credit default swaps or credit default futures, how Applicant will manage the unique risks associated with clearing these products, including but not limited to liquidity risk, currency risk, seasonable risk, compounding risk, jump-to-default risk or similar jump risk.

d. Existence of collateral (funds and assets) to apply to losses resulting from realized risk – Provide as **Exhibit D-4**:

(1) An explanation of the factors, process, and methodology used for calculating and setting required collateral levels, the required inputs, the appropriateness of those inputs, and an illustrative example;

(2) An analysis supporting the sufficiency of Applicant's collateral levels for capturing all or most price moves that may take place in one settlement cycle;

(3) A description of how Applicant will value open positions and collateral assets;

(4) A description and explanation of the forms of assets allowed as collateral, why they are acceptable, and whether there are any haircuts or concentration limits or charges on certain kinds of assets, including how often any such haircuts and concentration limits or charges are reviewed;

(5) An explanation of how and when Applicant will collect collateral, whether and under what circumstances it will collect collateral on an intraday basis, and what will happen if collateral is not received in a timely manner. Include a proposed collateral collection schedule based on changes in market positions and collateral values; and

(6) If options are involved, a full explanation of how Applicant will manage the associated risk through the use of collateral including, if applicable, a discussion of Applicant's option pricing model, how it establishes its implied volatility scan range, and other matters related to the complex matter of managing the risk associated with the clearing of option contracts.

EXHIBIT E — SETTLEMENT PROCEDURES

- Attach as **Exhibit E**, documents that demonstrate compliance with the settlement procedures requirements set forth in § 39.14 of the Commission's regulations, including but not limited to:

a. Settlement – Provide as **Exhibit E-1**, a full description of the daily process of settling financial obligations on all open positions being cleared. This must include:

(1) Procedures for completing settlements on a timely basis during normal market conditions (and no less frequently than once each business day);

(2) Procedures for completing settlements on a timely basis in varying market circumstances including in the event of a default by the clearing member creating the largest financial exposure for Applicant in extreme but plausible market conditions;

(3) A description of how contracts will be marked to market on at least a daily basis;

(4) Identification of the settlement banks used by Applicant (including identification of the lead settlement bank, if applicable) and a copy of Applicant's settlement bank agreement(s). Such settlement bank agreements

must (i) outline daily cash settlement procedures, (ii) state clearly when settlement fund transfers will occur, (iii) provide procedures for settlements on bank holidays when the markets are open, and (iv) ensure that settlements are final when effected;

(5) Identification of settlement banks that Applicant will allow its clearing members to use for margin calls and variation settlements;

(6) A description of the criteria and review process used by Applicant when selecting settlement banks to be used by the Applicant or its clearing members, including criteria addressing the capitalization, creditworthiness, access to liquidity, operational reliability, and regulation or supervision of such settlement banks;

(7) Procedures for monitoring the continued appropriateness of each approved settlement bank, including a description of how Applicant monitors the full range and concentration of its exposures to each settlement bank;

(8) The specific means by which settlement instructions are communicated from Applicant to the settlement bank(s);

(9) A timetable showing the flow of funds associated with the settlement of financial obligations with respect to all cleared products for a 24-hour period or such other settlement timeframe specified with respect to a particular product; this may be presented in the form of a chart, as in the following example:

FORM DCO - SAMPLE SETTLEMENT CYCLE CHART

[Specify U.S. Dollar or other currency as applicable]

TRADE DATE = T [INSERT TIME ZONE] [INSERT EXACT TIMES BELOW]	**EXAMPLE OF SETTLEMENT ACTIVITY FOR WHICH TIMES SHOULD BE PROVIDED**
T: _____ pm	Last market closes (end of regular trading hours).
T: Approx. ____ pm	DCO/DCM/SEF establishes daily settlement price for each product based on information generated by its [INSERT NAME OF APPLICABLE CLEARING SYSTEM].
T: By _____ pm	Clearing members' position information for intraday settlement is obtained from DCO's clearing system.
T+1: Approx. ____ am	DCO provides daily initial margin (IM) and settlement variation/option premium (SVOP) amounts to clearing members and banks.
T+1: By ____ am	Banks commit to pay daily IM and SVOP amounts.
T+1: Approx. ____ am	Banks pay daily IM and SVOP amounts from clearing members to DCO.
T+1: Approx. __ am	Banks pay daily IM and SVOP amounts from DCO to clearing members.
T: Approx. ____ pm	DCO/DCM/SEF determines prices for intraday settlement.
T: Approx. ____ pm	Clearing members' position information for intraday settlement is obtained from DCO's clearing system.
T: By approx. ____ pm	DCO provides intraday IM and SVOP amounts to banks and clearing members.

T: By ____ pm	Banks commit to pay intraday IM and SVOP amounts.
T: Approx. ____ pm	Banks pay intraday IM and SVOP amounts from clearing members to DCO.
T: Approx. ____ pm	Banks pay intraday IM and SVOP amounts from DCO to clearing members.

(10) A description of what happens in the event that there are insufficient funds in a clearing member's settlement account;

(11) An explanation of how and when Applicant will collect variation margin, whether and under what circumstances it will collect variation margin on an intraday basis, what will happen if variation margin is not received in a timely manner, and a proposed variation margin collection schedule based on changes in market prices;

(12) All the information above, to the extent relevant, for any products cleared that may be denominated in a foreign currency; and

(13) With respect to physical settlements, identify Applicant's rules that clearly state each obligation of Applicant with respect to physical deliveries, and explain how Applicant intends to identify and manage risks arising from physical settlement.

b. Recordkeeping – Provide as **Exhibit E-2**, a full description of the following:

(1) The nature and quality of the information collected concerning the flow of funds involved in clearing and settlement; and

(2) How such information will be recorded, maintained, and accessed.

c. Relationships with other clearing organizations – Provide as **Exhibit E-3**, a description of Applicant's relationships with other derivatives clearing organizations, clearing agencies, financial market utilities, or foreign entities that perform similar functions, including how compliance with the terms and conditions of agreements or arrangements with such other entities will be satisfied, *e.g.*, any netting or offset arrangements, cross-margining, portfolio margining, linkage, common banking, common clearing programs or limited guaranty agreements or arrangements.

EXHIBIT F — TREATMENT OF FUNDS

- Attach as **Exhibit F**, documents that demonstrate compliance with the treatment of funds requirements set forth in § 39.15 of the Commission's regulations, including but not limited to:

a. Safe custody – Provide as **Exhibit F-1**, documents that demonstrate:

(1) How Applicant will ensure the safekeeping of funds and assets belonging to clearing members and their customers in depositories and how Applicant will minimize the risk of loss or of delay in accessing such funds and assets;

(2) The depositories that will hold such funds and assets and any written agreements between or among such depositories, Applicant, or its clearing members regarding the legal status of the funds and assets and the specific conditions or prerequisites for movement of the funds and assets; and

(3) How Applicant will limit the concentration of risk in depositories where such funds and assets are deposited.

b. Segregation of customer and proprietary funds and assets – Provide as **Exhibit F-2**, documents that demonstrate:

(1) The appropriate segregation of customer funds and assets and associated acknowledgment documentation, including the acknowledgment letters required under §§ 1.20 and/or 22.5, as applicable, for each bank or trust company that Applicant will use for the deposit of customer funds and assets; and

(2) Requirements or restrictions regarding commingling customer funds and assets with proprietary funds and assets, obligating customer funds and assets for any purpose other than to purchase, clear, and settle the products Applicant is clearing, procedures regarding customer funds and assets which are subject to cross-margin or similar agreements, and any other aspects of the segregation of customer funds and assets.

c. Investment standards – Provide as **Exhibit F-3**, documents that demonstrate:

(1) Policies and procedures to ensure that funds and assets belonging to clearing members and their customers would only be invested in instruments with minimal credit, market, and liquidity risks, and that any investment of customer funds or assets would comply with the requirements of § 1.25; and

(2) How Applicant will obtain and keep associated records and data regarding the details of such investments.

EXHIBIT G — DEFAULT RULES AND PROCEDURES

- Attach as **Exhibit G**, documents that demonstrate compliance with the default rules and procedures requirements set forth in § 39.16 of the Commission's regulations, including but not limited to:

a. Default Management Plan – Applicant must provide a copy of its written default management plan which must contain all of the information required by § 39.16(b), along with Applicant's most recently documented results of a test of its default management plan.

b. Definition of default – Applicant must describe or otherwise document:

(1) The events (activities, lapses, or situations) that will constitute a clearing member default;

(2) What action Applicant can take upon a default and how Applicant will otherwise enforce the rules applicable in the event of default, including the steps and the sequence of the steps that will be followed. Identify whether a Default Management Committee exists and, if so, its role in the default process; and

(3) An example of a hypothetical default scenario and the results of the default management process used in the scenario.

c. Remedial action – Applicant must describe or otherwise document:

(1) The authority and methods by which Applicant may take appropriate action in the event of the default of a clearing member which may include, among other things, liquidating positions, hedging, auctioning, allocating (including any obligations of clearing members to participate in auctions or to accept allocations), and transferring of customer accounts to another clearing member

(including an explanation of the movement of positions and collateral on deposit); and

(2) Actions taken by a clearing member or other events that would put a clearing member on Applicant's "watch list" or similar device.

d. Process to address shortfalls – Applicant must describe or otherwise document:

(1) Procedures for the prompt application of Applicant and/or clearing member financial resources to address monetary shortfalls resulting from a default;

(2) How Applicant will make publicly available its default rules including a description of the priority of application of financial resources in the event of default (*i.e.*, the "waterfall"); and

(3) How Applicant will take timely action to contain losses and liquidity pressures and to continue to meet each obligation of Applicant.

e. Use of cross-margin programs – Describe or otherwise document, as applicable, how cross-margining programs will provide for fair and efficient means of covering losses in the event of a default of any clearing member participating in the program.

f. Customer priority rule – Describe or otherwise document rules and procedures regarding priority of customer accounts over proprietary accounts of defaulting clearing members and, where applicable, specifically in the context of specialized margin reduction programs such as cross-margining or common banking arrangements with other derivatives clearing organizations, clearing agencies, financial market utilities, or foreign entities that perform similar functions.

EXHIBIT H — RULE ENFORCEMENT

- Attach as **Exhibit H**, documents that demonstrate compliance with the rule enforcement requirements set forth in § 39.17 of the Commission's regulations, including but not limited to:

a. Surveillance – Describe or otherwise document arrangements and resources for the effective monitoring of compliance with Applicant's rules.

b. Enforcement – Describe or otherwise document:

(1) Arrangements and resources for enforcing compliance with Applicant's rules and addressing instances of non-compliance, including disciplinary tools such as limiting, suspending, or terminating a clearing member's access or member privileges; and

(2) The standards and any procedural protections Applicant will follow in imposing any such enforcement measure.

c. Dispute resolution – Describe or otherwise document arrangements and resources for resolution of disputes between clearing members and Applicant.

EXHIBIT I — SYSTEM SAFEGUARDS

- Attach as **Exhibit I**, documents that demonstrate compliance with the system safeguards requirements set forth in § 39.18 of the Commission's regulations, including but not limited to:

a. A description of Applicant's program of risk analysis and oversight with respect to its operations and automated systems. This program must be designed to ensure

daily processing, clearing, and settlement of transactions and address each of the following categories of risk:

(1) Information security;

(2) Business continuity-disaster recovery planning and resources;

(3) Capacity and performance planning;

(4) Systems operations;

(5) Systems development and quality assurance; and

(6) Physical security and environmental controls.

b. An explanation of how Applicant will establish and maintain resources that allow for the fulfillment of its program of risk analysis and oversight with respect to its operations and automated systems, and a description of such resources, including:

(1) A description of how Applicant will periodically verify that its resources are adequate to ensure daily processing, clearing, and, settlement;

(2) A demonstration that Applicant's automated systems are reliable, secure, and have (and will continue to have) adequate scalable capacity;

(3) A description of the physical, technological and personnel resources and procedures used by Applicant as part of its business continuity and disaster recovery plan, and support for the conclusion that these resources are sufficient to enable the Applicant to resume daily processing, clearing, and settlement no later than the next business day following a disruption; and

(4) A statement identifying which such resources are Applicant's own resources and which are provided by a service provider (outsourced). For resources that are outsourced, provide (i) all contracts governing the outsourcing arrangements, including all schedules and other supplemental materials, and (ii) a demonstration that Applicant employs personnel with the expertise necessary to enable them to supervise the service provider's delivery of the services.

c. An explanation of how Applicant will ensure the proper functioning of its systems, including its program for the periodic objective testing and review of its systems and back-up facilities (including all of its own and outsourced resources), and verification that all such resources will work effectively together;

d. Identification of the persons conducting the testing, including information as to their qualifications and independence;

e. A description of Applicant's emergency procedures, including a copy of its written plan for business continuity and disaster recovery and a description of how Applicant will coordinate its business continuity and disaster recovery plan (including testing) with its clearing members and providers of essential services such as telecommunications, power, and water; and

f. A description of how Applicant will report exceptional events and planned changes to the Commission as required by §§ 39.18(g) and 39.18(h).

EXHIBIT J — REPORTING

- Attach as **Exhibit J**, documents that demonstrate compliance with the reporting requirements set forth in § 39.19 of the Commission's regulations, including but not limited to:

    a. A description of how Applicant will make available to Commission staff all the information Commission staff needs in order to carry out effective oversight, *e.g.*, the internal staff procedures Applicant will follow to provide such information. If the laws or regulations of any foreign country in which Applicant is incorporated or organized require any approval(s) by a foreign regulatory authority with respect to the provision of any information to the Commission, Applicant must submit evidence that such approval(s) have been obtained.

    b. A representation that the Applicant will submit the information required to satisfy the daily, quarterly, annual, event-specific, and requested reporting requirements specified in § 39.19(c) of the Commission's regulations, in the format and manner and within the time specified by the Commission.

EXHIBIT K — RECORDKEEPING

- Attach as **Exhibit K**, documents that demonstrate compliance with the recordkeeping requirements set forth in § 39.20 of the Commission's regulations, including but not limited to:

    a. Applicant's recordkeeping and record retention policies and procedures;

    b. The different activities related to the entity as a derivatives clearing organization for which it must maintain records;

    c. The manner in which records relating to swaps and swap data are gathered and maintained; and

    d. How Applicant will satisfy the performance standards of § 1.31 as applicable to derivatives clearing organizations, including:

        (1) What "full" or "complete" will encompass with respect to each type of book or record that will be maintained;

        (2) The form and manner in which books or records will be compiled and maintained with respect to each type of activity for which such books or records will be kept;

        (3) Confirmation that books and records will be open to inspection by any representative of the Commission or of the U.S. Department of Justice;

        (4) How long books and records will be readily available and how they will be made readily available during the first two years; and

    e. How long books and records will be maintained (and confirmation that, in any event, they will be maintained as required in § 1.31).

EXHIBIT L — PUBLIC INFORMATION

- Attach as **Exhibit L**, documents that demonstrate compliance with the public information requirements set forth in § 39.21 of the Commission's regulations, including but not limited to:

    a. Applicant's procedures for making its rulebook, a list of all current clearing members, and all other information listed in § 39.21(c) readily available to the general public, in a timely manner, by posting such information on Applicant's website;

b. The URLs for Applicant's website for each item listed in § 39.21(c)(1) through (c)(9).

c. Any other information routinely made available to the public by Applicant;

d. How Applicant will make information available to clearing members and market participants in order to allow such persons to become familiar with Applicant's procedures before participating in clearing operations; and

e. How clearing members will be informed of their specific rights and obligations preceding a default and upon a default, and of the specific rights, options, and obligations of Applicant preceding and upon a clearing member's default.

EXHIBIT M — INFORMATION SHARING

- Attach as **Exhibit M**, documents that demonstrate compliance with the information sharing requirements set forth in § 39.22 of the Commission's regulations, including but not limited to:

    a. The appropriate and applicable information sharing agreements to which Applicant is, or intends to be, a party including any domestic or international information-sharing agreements or arrangements, whether formal or informal, which involve or relate to Applicant's operations, especially as it relates to measuring and addressing counterparty risk;

    b. A description of the types of information expected to be shared and how that information will be shared;

    c. An explanation as to how information obtained pursuant to any information-sharing agreements or arrangements would be used to further the objectives of Applicant's risk management program and any of its surveillance programs including financial surveillance and continuing eligibility of its clearing members; and

    d. An explanation as to how Applicant expects to obtain accurate information pursuant to the information-sharing agreement or arrangement and the mechanisms or procedures which would allow for timely use and application of all information.

EXHIBIT N — ANTITRUST CONSIDERATIONS

- Attach as **Exhibit N**, documents that demonstrate compliance with the antitrust considerations requirements set forth in § 39.23 of the Commission's regulations, including but not limited to policies or procedures to ensure compliance with the antitrust considerations requirements.

EXHIBIT O — GOVERNANCE

- Attach as **Exhibit O**, documents that demonstrate compliance with the governance fitness standards requirements set forth in § 39.24 of the Commission's regulations, including but not limited to:

    a. A copy of:

        (1) The charter (or mission statement) of Applicant (if not attached as **Exhibit A-8**);

        (2) The charter (or mission statement) of Applicant's Board of Directors, each committee composed entirely or in part of members of the Board of Directors (including any Executive Committee), as well as each other committee that has the authority to amend or constrain actions of Applicant's Board of Directors (if not attached as **Exhibit A-8**);

(3) If another entity "operates" the Applicant, the charter (or mission statement) of such entity's Board of Directors (if not attached as **Exhibit A-8**); and a description of the manner in which the Applicant will ensure that such entity's officers, directors, employees, and agents and such entity's books and records shall be subject to the authority of the Commission pursuant to the Act and the Commission's regulations thereunder; and

(4) An internal organizational chart showing the lines of responsibility and accountability for each operational unit.

b. A description of how Applicant's governance arrangements place a high priority on Applicant's safety and efficiency and explicitly support the stability of the broader financial system and other relevant public interest considerations of clearing members, customers of clearing members, and other relevant stakeholders;

c. A description of how the Board of Directors makes certain that Applicant's design, rules, overall strategy, and major decisions appropriately reflect the legitimate interests of clearing members, customers of clearing members, and other relevant stakeholders;

d. A description of how major decisions of the Board of Directors are clearly disclosed to clearing members and other relevant stakeholders, and will be disclosed to the Commission, and how major decisions of the Board of Directors having a broad market impact are clearly disclosed to the public, to the extent consistent with other statutory and regulatory requirements on confidentiality and disclosure;

e. A description of how Applicant's governance arrangements are disclosed, as appropriate, to clearing members, customers of clearing members, Applicant's owners, and the public, and will be disclosed to the Commission, to the extent consistent with other statutory and regulatory requirements on confidentiality and disclosure;

f. A description of how Applicant's governance arrangements: (1) describe the structure pursuant to which the Board of Directors, committees, and management operate; (2) include clear and direct lines of responsibility and accountability; (3) clearly specify the roles and responsibilities of the Board of Directors and its committees, including the establishment of a clear and documented risk management framework; and (4) clearly specify the roles and responsibilities of management;

g. A description of the procedures pursuant to which Applicant's Board of Directors oversees Applicant's chief risk officer, risk management committee, and material risk decisions;

h. A description of how Applicant provides risk management, internal control, and internal audit personnel with sufficient independence, authority, resources, and access to the Board of Directors so that the operations of Applicant are consistent with its risk management framework;

i. A description of how Applicant's governance arrangements assign responsibility and accountability for risk decisions, including in crises and emergencies, and assign responsibility for implementing default rules and procedures, system safeguard rules and procedures, and as applicable, recovery and wind-down plans;

j. A description of the fitness standards applicable to members of the Board of Directors, members of any disciplinary committee, clearing members, any other individual or entity with direct access to settlement or clearing activities, and any party affiliated with any of the above individuals or entities, including a description

or other documentation explaining how Applicant will collect and verify information that supports compliance with the fitness standards and how Applicant will enforce compliance with such standards; and

k. A description of how Applicant will make certain that: (1) its Board of Directors consists of suitable individuals having appropriate skills and incentives; (2) the performance of the Board of Directors and individual directors are reviewed on a regular basis; and (3) managers have the appropriate experience, skills, and integrity necessary to discharge operational and risk management responsibilities.

EXHIBIT P — CONFLICTS OF INTEREST

- Attach as **Exhibit P**, documents that demonstrate compliance with the conflicts of interest requirements set forth in § 39.25 of the Commission's regulations, including but not limited to:

    a. A description of Applicant's rules to minimize conflicts of interest in its decision-making process and how it enforces those rules;

    b. A description of Applicant's process for resolving such conflicts of interest or for making fair and non-biased decisions in the event of a conflict of interest; and

    c. A description of Applicant's procedures for identifying, addressing, and managing conflicts of interest involving members of its Board of Directors.

EXHIBIT Q — COMPOSITION OF GOVERNING BOARDS

- Attach as **Exhibit Q**, documents that demonstrate compliance with the composition of governing boards requirements set forth in § 39.26, including but not limited to documentation describing the composition of Applicant's Board of Directors, including the number of market participants.

EXHIBIT R — LEGAL RISK CONSIDERATIONS

- Attach as **Exhibit R**, documents that demonstrate compliance with the legal risk considerations requirements set forth in § 39.27 of the Commission's regulations, including but not limited to:

    a. A discussion of how Applicant operates pursuant to a well-founded, transparent, and enforceable legal framework that addresses each aspect of the activities of Applicant. The framework must provide for Applicant to act as a counterparty, including, as applicable:

        (1) Novation;

        (2) Netting arrangements;

        (3) Applicant's interest in collateral (including margin);

        (4) The steps that Applicant can take to address a default of a clearing member, including but not limited to, the unimpeded ability to liquidate collateral and close out or transfer positions in a timely manner;

        (5) Finality of settlement and funds transfers that are irrevocable and unconditional when effected (no later than when Applicant's accounts are debited and credited); and

        (6) Other significant aspects of Applicant's operations, risk management procedures, and related requirements.

    b. If Applicant provides, or will provide, clearing services outside the United States, Applicant must provide a memorandum from local counsel analyzing insolvency

issues in the foreign jurisdiction where Applicant is based, which should describe or otherwise document:

(1) The manner in which Applicant's clearing rules and procedures pertaining to customer funds ("FCM Clearing Rules") segregate such funds, in accordance with section 4d of the Act and the Commission's regulations ("ring-fence");

(2) The basis for the conclusion that the arrangements to ring-fence customer funds set forth in the FCM Clearing Rules would be effective, under any relevant non-U.S. law or regulation, in the insolvency of a futures commission merchant ("FCM") clearing member or of the Applicant itself, including how such customer funds would not, therefore, form part of the general estate for distribution to the unsecured creditors of an insolvent FCM clearing member or of the Applicant;

(3) The basis for the conclusion that the laws of the jurisdiction in which Applicant is domiciled and the laws of any other relevant jurisdiction (*e.g.*, other jurisdictions in which customer funds may be held) support the enforceability of the FCM Clearing Rules;

(4) The basis for the conclusion that a local court or insolvency official in the jurisdiction in which Applicant is domiciled (and any other relevant jurisdiction) respect the choice of U.S. law in governing specific aspects of the FCM Clearing Rules to determine the extent of rights that Applicant has with respect to customer funds and be bound to follow the FCM Clearing Rules with respect to customer funds. The memorandum should explain whether the application of U.S. law to customer funds would contravene any public policy in the jurisdiction in which Applicant is domiciled (or any other relevant jurisdiction);

(5) The basis for the conclusion that the FCM Clearing Rules are enforceable (*i.e.*, the conclusion that the Applicant may take default action, pursuant to the FCM Clearing Rules, discretely against each FCM clearing member in respect of FCM customer accounts without interference from the law of insolvency applicable to the FCM clearing member or to Applicant); and

(6) The basis for the conclusion that following the default of an FCM clearing member or of the Applicant, Applicant will be able to comply with the provisions of the U.S. Bankruptcy Code and Commission regulations with respect to the pro rata distribution requirements set forth therein, as well as comply with any relevant order or direction by a U.S. court (including a bankruptcy court) regarding the distribution of customer funds.

In all cases, the memorandum must include separate discussions of the legal analysis and conclusions with respect to: (a) the default of the Applicant, and (b) the default of an FCM clearing member.

32. Revise Appendix B to part 39 to read as follows:

Appendix B to Part 39—Subpart C Election Form

COMMODITY FUTURES TRADING COMMISSION

SUBPART C ELECTION FORM

GENERAL INSTRUCTIONS: **Intentional misstatements or omissions of fact may constitute federal criminal violations (7 U.S.C. 13 and 18 U.S.C. 1001).**

DEFINITIONS

Unless the context requires otherwise, all terms used in this Subpart C Election Form have the same meaning as in the Commodity Exchange Act ("Act"), and in the General Rules and Regulations of the Commodity Futures Trading Commission ("Commission") thereunder. All references to Commission regulations are found at 17 CFR Ch. I.

For purposes of this Subpart C Election Form, the term "Applicant" shall mean a derivatives clearing organization that is filing this Subpart C Election Form with a Form DCO as part of an application for registration as a derivatives clearing organization pursuant to section 5b of the Act and 17 CFR 39.3(a).

GENERAL INSTRUCTIONS

1. Any derivatives clearing organization requesting an election to become subject to subpart C of part 39 of the Commission's regulations must file this Subpart C Election Form. The Subpart C Election Form includes the election to be subject to the provisions of subpart C of part 39 of the Commission's regulations, certain required certifications, disclosures, and exhibits, and any supplements or amendments thereto filed pursuant to 17 CFR 39.31(b) or (c) (collectively, the "Subpart C Election Form").

2. Any derivatives clearing organization wishing to request an extension of up to one year to comply with any of the provisions of 17 CFR 39.34, 17 CFR 39.35 or 17 CFR 39.39, pursuant to 17 CFR 39.34(d) or 17 CFR 39.39(f) must do so prior to filing this Subpart C Election Form. Such requests shall become part of this Subpart C Election Form.

3. Individuals' names, except the executing signature, shall be given in full (Last Name, First Name, Middle Name).

4. The signatures required in this Subpart C Election Form shall be the manual signatures of a duly authorized representative of the derivatives clearing organization as follows: If the Subpart C Election Form is filed by a corporation, it must be signed in the name of the corporation by a principal officer duly authorized; if filed by a limited liability company, it must be signed in the name of the limited liability company by a manager or member duly authorized to sign on the limited liability company's behalf; if filed by a partnership, it must be signed in the name of the partnership by a general partner duly authorized; if filed by an unincorporated organization or association which is not a partnership, it must be signed in the name of such organization or association by the managing agent, *i.e.*, a duly authorized person who directs or manages or who participates in the directing or managing of its affairs.

5. All applicable items must be answered in full.

6. Under section 5b of the Act and the Commission's regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this Subpart C Election Form from any Applicant seeking registration as a derivatives clearing organization and from any registered derivatives clearing organization.

7. Disclosure of the information specified in this Subpart C Election Form is mandatory prior to the processing of the election to become a derivatives clearing organization subject to the provisions of

subpart C of part 39 of the Commission's regulations. The Commission may determine that additional information is required in order to process such election.

8. A Subpart C Election Form that is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Subpart C Election Form, however, shall not constitute a finding that the Subpart C Election Form is acceptable as filed or that the information is true, current or complete.

9. As provided in 17 CFR 39.31(d), except in cases where a derivatives clearing organization submits a request for confidential treatment with the Secretary of the Commission pursuant to the Freedom of Information Act and 17 CFR 145.9, information supplied in this Subpart C Election Form will be included routinely in the public files of the Commission and will be made available for inspection by any interested person.

APPLICATION AMENDMENTS

1. 17 CFR 39.31(b)(3) and (c)(4) require a derivatives clearing organization that has submitted a Subpart C Election Form to promptly amend its Subpart C Election Form if it discovers a material omission or error in, or if there is a material change in, the information provided to the Commission in the Subpart C Election Form or other information provided in connection with the Subpart C Election Form.

2. When amending a Subpart C Election Form, a derivatives clearing organization must re-file the Election and Certifications page, amended if necessary, and including all required executing signatures, and attach thereto revised exhibits or other materials marked to show changes, as applicable.

WHERE TO FILE

1. This Subpart C Election Form must be filed electronically with the Secretary of the Commission in the format and manner specified by the Commission.

2. Any supplemental information must be filed electronically with the Division of Clearing and Risk, or any successor division, in the format and manner specified by the Commission.

COMMODITY FUTURES TRADING COMMISSION

SUBPART C ELECTION FORM

ELECTION AND CERTIFICATIONS

_____

Exact Name of the Derivatives Clearing Organization
(as set forth in its charter, if an Applicant,
or as set forth in its most recent order of registration, if registered with the Commission)

☐ Check here and complete sections 1 and 3 below, if the organization is an Applicant.

☐ Check here and complete sections 2 and 3 below, if the organization currently is registered with the Commission as a derivatives clearing organization.

1. The derivatives clearing organization named above hereby elects to become subject to the provisions of subpart C of part 39 of the Commission's regulations in the event that the Commission approves its application for registration as a derivatives clearing organization.

   The derivatives clearing organization and the undersigned each certify that, in the event that the Commission approves the derivatives clearing organization's application for registration and permits its election to become subject to subpart C of part 39 of the Commission's regulations:

   a. The derivatives clearing organization will be in compliance with such regulations as of the date set forth in the notice thereof provided by the Commission pursuant to 17 CFR 39.31(c)(2), except to the limited extent that the Commission has granted the derivatives clearing organization an extension of time to comply with: (1) specified provisions of 17 CFR 39.34, pursuant to 17 CFR 39.34(d); and/or (2) specified provisions of 17 CFR 39.35 and/or 17 CFR 39.39, pursuant to 17 CFR 39.39(f);

   b. The derivatives clearing organization will be in compliance with all provisions of 17 CFR 39.34, 39.35 and/or 39.39 for which the Commission, pursuant to 17 CFR 39.34(d) and/or 17 CFR 39.39(f), has granted an extension of time to comply in accordance with the terms of such extensions; and

   c. The derivatives clearing organization will remain in compliance with the provisions contained in subpart C of part 39 of the Commission's regulations until this election is rescinded pursuant to 17 CFR 39.31(e).

_____
Name of Derivatives Clearing Organization

By:_____
Manual Signature of Duly Authorized Person

_____
Print Name and Title of Signatory

2. The derivatives clearing organization named above hereby elects to become subject to the provisions of subpart C of part 39 of the Commission's regulations as of:

_____ ("Effective Date")
[insert date, which must be **at least 10 business days after the date this Subpart C Election Form is filed with the Commission**].

The derivatives clearing organization and the undersigned each certify that:

a. As of the Effective Date set forth above, the derivatives clearing organization shall be in compliance with subpart C of part 39 of the Commission's regulations, except to the limited extent that the Commission has granted the derivatives clearing organization an extension of time to comply with: (1) specified provisions of 17 CFR 39.34, pursuant to 17 CFR 39.34(d); and/or (2) specified provisions of 17 CFR 39.35 and/or 17 CFR 39.39, pursuant to 17 CFR 39.39(f);

b. The derivatives clearing organization will be in compliance with all provisions of 17 CFR 39.34, 39.35 and/or 39.39 for which the Commission, pursuant to 17 CFR 39.34(d) and/or 17 CFR 39.39(f), has granted an extension of time to comply in accordance with the terms of such extensions; and

c. The derivatives clearing organization will remain in compliance with provisions contained in subpart C of part 39 of the Commission's regulations until this election is rescinded pursuant to 17 CFR 39.31(e).

_____
Name of Derivatives Clearing Organization

By:_____
Manual Signature of Duly Authorized Person

_____
Print Name and Title of Signatory

3. The derivatives clearing organization named above has duly caused this Subpart C Election Form (which includes, as an integral part thereof, the Election and Certifications and all Disclosures and Exhibits) to be signed on its behalf by its duly authorized representative as of the _____ day of _____, 20_____. The derivatives clearing organization and the undersigned each represent hereby that, to the best of their knowledge, all information contained in this Subpart C Election Form is true, current and complete in all material respects. It is understood that all required items including, without limitation, the Election and Certifications and Disclosures and Exhibits, are considered integral parts of this Subpart C Election Form.

_____
Name of Derivatives Clearing Organization

By:_____
Manual Signature of Duly Authorized Person

_____
Print Name and Title of Signatory

COMMODITY FUTURES TRADING COMMISSION

PART 39, SUBPART C ELECTION FORM

DISCLOSURES AND EXHIBITS

Each derivatives clearing organization that requests an election to become subject to the provisions set forth in subpart C of part 39 of the Commission's regulations shall provide the Disclosures and Exhibits set forth below:

DISCLOSURES:

The derivatives clearing organization shall publish on its website in a readily identifiable location, the following documents that are required to be completed pursuant to 17 CFR 39.37:

1. The derivatives clearing organization's responses to the Disclosure Framework for Financial Market Infrastructures ("Disclosure Framework"), published by the Committee on Payments and Market Infrastructure ("CPMI") and the Board of the International Organization of Securities Commissions ("IOSCO"). The derivatives clearing organization's responses must be completed in accordance with section 2.0 and Annex A of the Disclosure Framework and must fully explain how the derivatives clearing organization observes the Principles for Financial Market Infrastructures ("PFMIs") published by CPMI-IOSCO.

   Provide the URL to the specific page on the derivatives clearing organization's website where its responses to the Disclosure Framework may be found:

   _____

2. The most recent quantitative disclosure prepared by the derivatives clearing organization that satisfies the Public Quantitative Disclosure Standards for Central Counterparties published by CPMI-IOSCO ("Quantitative Disclosure").

   If applicable, provide the URL to the specific page on the derivatives clearing organization's website where its Quantitative Disclosure may be found:

   _____

EXHIBITS:

EXHIBIT INSTRUCTIONS:

1. The derivatives clearing organization must include a Table of Contents listing each Exhibit required by this Subpart C Election Form.

2. If the derivatives clearing organization is an Applicant, in its Form DCO, the derivatives clearing organization may summarize such information and provide a cross-reference to the Exhibit in this Subpart C Election Form that contains the required information.

The derivatives clearing organization shall provide the following Exhibits to this Subpart C Election Form:

EXHIBIT A – COMPLIANCE WITH SUBPART C

Attach, as **Exhibit A**, a regulatory compliance chart that sets forth citations to the relevant rules, policies, and procedures of the derivatives clearing organization that address §§ 39.32-39.39 of the Commission's regulations and a narrative summary of the manner in which the derivatives clearing organization will comply with each regulation.

The narrative summary shall: (a) specifically and meaningfully explain the manner in which the derivatives clearing organization will comply with each such regulation; (b) sufficiently integrate references to documents contained in the exhibits to this Subpart C Election Form to clearly convey the derivatives clearing organization's policies and procedures with respect to each regulation; and (c) readily identify within such exhibits those derivatives clearing organization rules and governing documents that support the certifications set forth in this Subpart C Election Form. The narrative summary may be included as part of the compliance chart required by Exhibit A or a separate document within Exhibit A.

All citations and compliance summaries shall be separated by individual regulation and shall be clearly labeled with the corresponding regulation.

EXHIBIT B – FINANCIAL RESOURCES

Attach, as **Exhibit B**, information and documents that demonstrate compliance with the financial resource requirements set forth in § 39.33 of the Commission's regulations, including but not limited to:

a. Valuation of financial resources – Attach as **Exhibit B-1**, a demonstration that assessments for additional guaranty fund contributions (*i.e.*, guaranty fund contributions that are not prefunded) are not included in calculating the financial resources available to meet the derivatives clearing organization's obligations under § 39.33(a) or § 39.11(a)(1).

b. Liquidity resources – Attach as **Exhibit B-2**, a demonstration that the derivatives clearing organization maintains eligible liquidity resources as required under § 39.33(c).

c. Liquidity providers – Attach as **Exhibit B-3**, a demonstration that the derivatives clearing organization's liquidity providers meet the requirements as set forth in § 39.33(d).

d. Documentation of financial resources and liquidity resources – Attach as **Exhibit B-4**, a demonstration that the derivatives clearing organization documents its supporting rationale for, and has appropriate governance arrangements relating to, the amount of total financial resources it maintains pursuant to § 39.33(a) and the amount of total liquidity resources it maintains pursuant to § 39.33(c).

EXHIBIT C – SYSTEM SAFEGUARDS

Attach, as **Exhibit C**, information and documents that demonstrate compliance with the system safeguards requirements set forth in § 39.34 of the Commission's regulations, including but not limited to:

a. Attach as **Exhibit C-1**, a demonstration that, notwithstanding § 39.18(c)(2), the business continuity and disaster recovery plan described in § 39.18(c)(1) and the physical, technological, and personnel resources described in § 39.18(c)(1) enable the derivatives clearing organization to recover its operations and resume daily processing, clearing, and

settlement no later than two hours following the disruption, for any disruption including a wide-scale disruption.

b. Attach as **Exhibit C-2**, a demonstration that the derivatives clearing organization maintains a degree of geographic dispersal of physical, technological and personnel resources consistent with the requirements set forth in § 39.34(b).

c. Attach as **Exhibit C-3**, a demonstration that the derivatives clearing organization conducts regular, periodic tests of its business continuity and disaster recovery plans and resources and its capacity to achieve the required recovery time objective in the event of a wide-scale disruption, and that the provisions of § 39.18(e) apply to such testing.

EXHIBIT D – DEFAULT RULES AND PROCEDURES FOR UNCOVERED LOSSES OR SHORTFALLS

Attach, as **Exhibit D**, information and documents that demonstrate compliance with the requirements for default rules and procedures for uncovered losses or shortfalls set forth in § 39.35 of the Commission's regulations, including but not limited to:

a. Allocation of uncovered credit losses – Attach as **Exhibit D-1**, a demonstration that the derivatives clearing organization has explicit rules and procedures that address fully any loss arising from any individual or combined default relating to any clearing member's obligations to the derivatives clearing organization.

b. Allocation of uncovered liquidity shortfalls – Attach as **Exhibit D-2**, a demonstration that the derivatives clearing organization has established rules and/or procedures that enable it to promptly meet all of its settlement obligations, on a same day and, as appropriate, intraday and multiday basis, in the context of the occurrence of the scenarios set forth in § 39.35(b)(1)(i) and (ii). The derivatives clearing organization must demonstrate how such rules and procedures comply with the requirements of § 39.35(b)(2).

EXHIBIT E – RISK MANAGEMENT

Attach, as **Exhibit E**, information and documents that demonstrate compliance with the risk management requirements set forth in § 39.36 of the Commission's regulations, including but not limited to:

a. Stress tests of financial resources – Attach as **Exhibit E-1**, a demonstration that the derivatives clearing organization conducts stress tests of its financial resources in accordance with the standards and practices set forth in § 39.36(a);

b. Sensitivity analysis of margin model – Attach as **Exhibit E-2**, a demonstration that the derivatives clearing organization conducts on a monthly basis or more frequently as appropriate, a sensitivity analysis of its margin models to analyze and monitor model performance and overall margin coverage. The derivatives clearing organization shall demonstrate that the sensitivity analysis is conducted on both actual and hypothetical positions and in accordance with the requirements set forth in § 39.36(b)(2) and (3);

c. Stress tests of liquidity resources – Attach as **Exhibit E-3**, a demonstration that the derivatives clearing organization conducts stress tests of its liquidity resources in accordance with the standards and practices set forth in § 39.36(c);

d. Theoretical and empirical properties – Attach as **Exhibit E-4**, a demonstration that the derivatives clearing organization conducts an assessment of the theoretical and empirical properties of its margin model for all products it clears;

e. Validation – Attach as **Exhibit E-5**, a demonstration that the derivatives clearing organization conducts on an annual basis, a full validation of its financial risk management model and its liquidity risk management model in accordance with the requirements set forth in § 39.36(e);

f. Custody and investment risk – Attach as **Exhibit E-6**, a demonstration that the custody and investment arrangements of the derivatives clearing organization's own funds and assets are subject to the same requirements as those specified in § 39.15 for the funds and assets of clearing members, and apply to the derivatives clearing organization's own funds and assets to the same extent as if such funds and assets belonged to clearing members; and

g. Settlement banks – Attach as **Exhibit E-7**, a demonstration that the derivatives clearing organization, monitors, manages, and limits its credit and liquidity risks arising from its settlement banks; establishes and monitors adherence to strict criteria for its settlement banks that take account of, among other things, their regulation and supervision, creditworthiness, capitalization, access to liquidity, and operational reliability; and monitors and manages the concentration of credit and liquidity exposures to its settlement banks.

EXHIBIT F – RECOVERY AND WIND-DOWN

Attach, as **Exhibit F**, information and documents that demonstrate compliance with the recovery and wind-down requirements set forth in § 39.39 of the Commission's regulations, including but not limited to:

a. Recovery and wind-down plans – Attach as **Exhibit F-1**, a demonstration that the derivatives clearing organization has separate plans that set forth in detail: recovery or orderly wind-down, necessitated by uncovered credit losses or liquidity shortfalls, and recovery or orderly wind-down, necessitated by general business risk, operational risk, or any other risk that threatens the derivatives clearing organization's viability as a going concern. The demonstration shall also include how the plans comply with the requirements of §39.39(c).

b. Financial resources to support recovery – Attach as **Exhibit F-2**, a narrative summary that demonstrates how the financial statements filed with the Commission pursuant to §§ 39.11 and 39.33 demonstrate that the derivatives clearing organization maintains sufficient unencumbered liquid financial assets, funded by the equity of its owners, to implement its recovery or wind-down plans. The narrative summary shall include a description of how the derivatives clearing organization complies with the requirements of § 39.39(d).

c. Additional financial resources – Attach as **Exhibit F-3**, a demonstration that the derivatives clearing organization maintains viable plans for raising additional financial resources as required under § 39.39(e).

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

33. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2(a)(12), 12a, 13(c), 13(d), 13(e), and 16(b).

34. In § 140.94, revise paragraph (c) to read as follows:

§ 140.94 Delegation of authority to the Director of the Division of Swap Dealer and Intermediary Oversight and the Director of the Division of Clearing and Risk.

* * * * *

(c) * * *

(1) The authority to review applications for registration as a derivatives clearing organization filed with the Commission under § 39.3(a)(1) of this chapter, to determine that an application is materially complete pursuant to § 39.3(a)(2) of this chapter, to request additional information in support of an application pursuant to § 39.3(a)(3) of this chapter, to extend the review period for an application pursuant to § 39.3(a)(6) of this chapter, to stay the running of the 180-day review period if an application is incomplete pursuant to § 39.3(b)(1) of this chapter, to review requests for amendments to orders of registration filed with the Commission under § 39.3(d)(1) of this chapter, to request additional information in support of a request for an amendment to an order of registration pursuant to § 39.3(d)(2) of this chapter, and to request additional information in support of a rule submission pursuant to § 39.3(g)(3) of this chapter;

* * * * *

(4) All functions reserved to the Commission in § 39.10(c)(4)(iv) of this chapter;

(5) All functions reserved to the Commission in § 39.11(b)(1)(v), (b)(2)(ii), (c)(1) and (3), and (f)(1), and (2) of this chapter;

(6) All functions reserved to the Commission in § 39.12(a)(5)(iii) of this chapter;

(7) All functions reserved to the Commission in § 39.13(g)(8)(ii), (h)(1)(i)(C), (h)(1)(ii), (h)(3)(i) and (ii), and (h)(5)(i)(C) of this chapter;

(8) The authority to request additional information in support of a rule submission under §§ 39.13(i)(2) and 39.15(b)(2)(iii) of this chapter;

(9) All functions reserved to the Commission in § 39.19(c)(2), (c)(3)(iv), and (c)(5) of this chapter;

(10) All functions reserved to the Commission in § 39.20(a)(5) of this chapter;

(11) All functions reserved to the Commission in § 39.21(c) of this chapter;

(12) All functions reserved to the Commission in § 39.31 of this chapter; and

(13) The authority to approve the requests described in §§ 39.34(d) and 39.39(f) of this chapter.

* * * * *

Issued in Washington, DC, on December 20, 2019, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

NOTE: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Derivatives Clearing Organization General Provisions and Core Principles – Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1 – Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

Appendix 2 – Statement of Chairman Heath P. Tarbert

Clearinghouses—often called central counterparties or CCPs—are what make our futures, options, and much of our swaps markets work. Once a buyer and seller enter into a derivatives trade, the CCP takes on each party's credit risk for the duration of the contract. Hundreds of thousands of trades occur in the United States because market participants never need to worry about counterparties not making good on their payment obligations. The entire risk of an exchange or even several exchanges is centralized within a given CCP. As a consequence, CCPs are the "risk controllers"[1] that stand at the very epicenter of our markets.

As Chairman, I have emphasized that one of the most critical responsibilities of the CFTC is supervising CCPs on a daily basis.[2] When the term "prudential regulators" is thrown around in Washington, the CFTC is usually excluded from the list. Nothing could be more misleading. The CFTC's role as the nation's prudential regulator for derivatives clearinghouses is part of the reason American CCPs are undoubtedly the strongest and most resilient in the world.[3]

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[1] *See* Peter Norman, The Risk Controllers: Central Counterparty Clearing in Globalized Financial Markets, John Wiley and Sons, Ltd. (2011).

[2] *See* Chairman Heath P. Tarbert, "Why the CFTC is the most important regulator you've never heard of," Fox Business (July 29, 2019), available at: *https://www.foxbusiness.com/financials/why-the-cftc-is-the-most-important-regulator-youve-never-heard-of.*

[3] *Id.*

Part 39 of our regulations implements our statutory principles-based framework for the supervision and regulation of derivatives clearinghouses.[4] Our framework focuses on all key aspects of CCP operations, including financial resources, member eligibility, risk management, and system safeguards. It is incumbent upon us to revise Part 39 at regular intervals to ensure it remains up-to-date as technology and other market-driven changes come to the fore.

I am therefore pleased to support the final amendments to Part 39 before the Commission today. The final amendments[5] represent the codification of close to a decade of best practices and procedures adopted by CCPs in accordance with our core principles. In promulgating these amendments, we are also making good on our promise to strengthen the regulation of CCPs and to make our regulations more transparent to all market participants.

[4] 17 CFR part 39.

[5] As important as these amendments are, they do not address a number of emergent issues relating to CCP risk, governance, and default procedures. Many of these important issues will soon be taken up by the CCP Risk and Governance Subcommittee of our Market Risk Advisory Committee. I look forward to their consideration and the public discussion that it will foster.

Appendix 3 – Statement of Commissioner Brian D. Quintenz

I am pleased to support today's final rule that amends the Commission's regulations governing derivatives clearing organizations (DCOs).[1]

Before highlighting aspects of the final rule, I would like to review the importance of central clearing, DCOs, and the Commission's oversight over these institutions. DCOs play a truly crucial role in the futures and swap markets by serving as a central counterparty to every transaction that they clear. When a transaction is cleared, the DCO guarantees performance of the contract until final settlement so that market participants do not bear counterparty credit risk to each other. The DCO sets collateral and daily-mark-to-market requirements, according to rules enforced by the CFTC, and otherwise maintains the financial integrity of cleared transactions, under CFTC-supervision. The CFTC's Division of Clearing and Risk (DCR) regularly examines DCOs for compliance with the Commission's regulations; reviews new DCO rules; and assesses how DCOs manage market and liquidity risks.

Central clearing has long been a hallmark of the futures market, dating back to the 1920s and functioning extremely well since then. Following Congress' 2010 amendments to the Commodity Exchange Act (CEA),[2] CFTC-regulated DCOs began clearing interest rate swaps and credit default swaps pursuant to revised statutory core principles[3] and revised CFTC DCO regulations.[4] Sixteen DCOs, located in the U.S., Canada, the U.K, France, Germany, and Singapore, are currently registered with the

[1] The CFTC's regulations for DCOs are codified in part 39 (17 CFR part 39).

[2] Dodd-Frank Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

[3] Sec. 5b of the CEA.

[4] The current version of the CFTC's DCO regulations was promulgated in 2011 (DCO General Provisions and Core Principles, 76 FR 69334 (Nov. 8, 2011)).

Commission to clear a diverse set of derivatives ranging from agricultural, energy, and Bitcoin futures, to overnight index swaps, to foreign exchange options.[5] Every day, these sixteen DCOs settle over $10 billion in daily mark-to-market obligations and hold over $450 billion in initial margin collateral.[6] Financial institutions, commercial end-users, and retail investors rely on the continued success of DCOs in order to ensure the integrity of their risk management transactions. The public also relies on the CFTC to ensure that DCOs are subject to meaningful regulations that prevent undue risk, while also providing DCOs with sufficient discretion to manage aspects of their operations that they are best equipped to handle without unnecessary government intervention. Today's final version of revised regulations for DCOs includes carefully considered enhancements which the Commission believes DCOs can fulfill without incurring overly burdensome compliance costs.

I am proud that the CFTC is one of only a few authorities around the world to have issued DCO rules that are consistent with the internationally-recognized CPMI-IOSCO *Principles for Financial Market Infrastructures* (PFMIs).[7] The Commission was a leader in both the development of the PFMIs as well as adopting rules consistent with the PFMIs, having done so in 2013.[8] The CFTC's rules for DCOs were augmented again

[5] The list of registered DCOs is available on the CFTC's website at, *https://sirt.cftc.gov/sirt/sirt.aspx?Topic=ClearingOrganizations*.

[6] These figures represent daily averages over the past month and concern only products within the Commission's jurisdiction.

[7] The PFMIs are available at, *https://www.bis.org/cpmi/info_pfmi.htm*.

[8] DCOs and International Standards, 78 FR 72476 (Dec. 2, 2013).

in 2016 to include industry-accepted best practices for cybersecurity, business continuity, and disaster recovery.[9]

The amendments set forth in today's final rule include new requirements for: governance; reporting clearing members' positions to the Commission; reporting changes in liquidity funding and settlement bank arrangements; determining initial margin requirements; default management procedures; enterprise risk management; reviewing haircuts on assets submitted as initial margin; exemptions for DCOs clearing only fully-collateralized contracts; cross-margining programs; transfers of open interest; and public disclosures issued in response to an CPMI-IOSCO initiative.[10]

I would like to highlight some of the provisions of the final rule. Regarding reporting to the Commission, a DCO will be required to report daily the amounts of initial and variation margin for "individual customer accounts" held within each futures commission merchant (FCM)-clearing member's overall "customer account."[11] Such individual customer accounts include individual funds sponsored by an asset manager and an asset manager's separate accounts for institutional investors. DCR can use this information to more precisely assess the risks and exposures of a DCO's clearing members. In adopting this new requirement, the Commission noted that much of this information is already reported, meaning the burden to comply with the revised rule should be minimal. Regarding default management, the final rule requires a DCO to

[9] System Safeguards Testing Requirements for DCOs, 81 FR 64322 (Sept. 19, 2016). In 2016, the Commission also instituted similar requirements for DCMs, SEFs and SDRs (81 FR 64272 (Sept. 19, 2016)).

[10] Revised and new regulations 39.3(g); 39.10(d); 39.11(c) and (e); 39.13(f), (g)(3), (g)(8), and (i); 39.16(c), 39.19(c); 39.26; and 39.37(c).

[11] Revised regulation 39.19(c)(1)(i).

include clearing members in annual tests of its default management plan.[12] Finally, I note that while the proposal would have required a DCO to file a new report with the Commission 30 days in advance of clearing a new product,[13] the final rule eliminates this requirement, noting that both designated contract markets (DCMs) and swap execution facilities (SEFs) already file notices of new product offerings with the Commission under the "self-certification" process.

In conclusion, I am pleased that in finalizing these new rules, the Commission has genuinely taken the public's comments into account, reviewing input not only from the DCOs themselves, but also from the market participants that clear their trades at DCOs, including investment funds, futures commission merchants, and other financial institutions. I recognize that commenters raised important issues that are beyond the scope of, or not included in, today's rulemaking concerning the relationship between a DCO and its members. While the Commission will continue to consider the public's views on these issues, the Commission is focused on ensuring DCOs comply with the CEA's core principles. I hope that the DCOs, their members, and their members' customers can continue working in good faith to find constructive solutions to other issues not included here.

[12] Revised regulation 39.16(b).

[13] Proposed regulation 39.19(c)(4)(xxvi).