

under the Act and the Commission's regulations thereunder. In order to provide broad flexible performance standards for record-keeping, §1.31 was updated and amended by the Commission in 1999. Accordingly, §1.31 itself establishes the guidance regarding the form and manner for keeping records.

Core Principle 18 of section 5(d) of the Act: *ANTITRUST CONSIDERATIONS—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall endeavor to avoid—(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or (B) imposing any material anti-competitive burden on trading on the contract market.*

(a) *Application guidance.* An entity seeking designation as a contract market may request that the Commission consider under the provisions of section 15(b) of the Act any of the entity's rules, including trading protocols or policies, and including both operational rules and the terms or conditions of products listed for trading, at the time of designation or thereafter. The Commission intends to apply section 15(b) of the Act to its consideration of issues under this core principle in a manner consistent with that previously applied to contract markets.

(b) *Acceptable practices.* [Reserved]

[66 FR 42277, Aug. 10, 2001, as amended at 67 FR 62352, Oct. 7, 2002]

## PART 39—DERIVATIVES CLEARING ORGANIZATIONS

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APPENDIX A TO PART 39—APPLICATION GUIDANCE AND COMPLIANCE WITH CORE PRINCIPLES

AUTHORITY: 7 U.S.C. 7b as amended by Appendix E of Pub. L. 106-554, 114 Stat. 2763A-365.

SOURCE: 66 FR 45609, Aug. 29, 2001, unless otherwise noted.

### § 39.1 Scope.

The provisions of this part apply to any derivatives clearing organization as defined under section 1a(9) of the Act which is registered or deemed to be

registered with the Commission as a derivatives clearing organization, is required to register as such with the Commission pursuant to section 5b(a) of the Act, or which voluntarily applies to register as such with the Commission pursuant to section 5b(b) or otherwise.

### § 39.2 Exemption.

A derivatives clearing organization and the clearing of agreements, contracts and transactions on a derivatives clearing organization are exempt from all Commission regulations except for the requirements of this part 39 and §§1.3, 1.12(f)(1), 1.20, 1.24, 1.25, 1.26, 1.27, 1.29, 1.31, 1.36, 1.38(b), part 40 and part 190 of this chapter, and as applicable to the agreement, contract or transaction cleared, parts 15 through 18 of this chapter. The foregoing reserved regulations are applicable to a derivatives clearing organization and its activities as though they were set forth in this section and included specific reference to derivatives clearing organizations. Any reference to the term "clearinghouse" or "clearing organization" contained in the regulations shall be deemed to refer to a derivatives clearing organization.

### § 39.3 Procedures for registration.

(a) *Registration by application.* An organization shall be deemed to be registered as a derivatives clearing organization sixty days after receipt by the Commission of an application for registration as a derivatives clearing organization unless notified otherwise during that period, or, as determined by Commission order, registered upon conditions, if:

(1) The application is labeled as being submitted pursuant to this part 39;

(2) The applicant represents that it will operate in accordance with the definition of derivatives clearing organization contained in section 1a(9) of the Act;

(3) The application includes a copy of the applicant's rules;

(4) To the extent it is not self evident from the applicant's rules, the application demonstrates how the applicant is able to satisfy each of the core principles specified in section 5b(c)(2) of the Act;

(5) The applicant submits agreements entered into or to be entered into between or among the applicant, its operator or its participants, and descriptions of system test procedures, tests conducted or test results, that will enable the applicant to comply, or demonstrate the applicant's ability to comply, with the core principles specified in section 5b(c)(2) of the Act;

(6) The applicant does not amend or supplement the application except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period;

(7) The applicant identifies with particularity information in the application that will be subject to a request for confidential treatment and supports that request for confidential treatment with reasonable justification; and

(8) The applicant has not instructed the Commission in writing during the review period to review the application pursuant to the time provisions of and procedures under section 6 of the Act.

(b) *Termination of part 39 review.* If, during the sixty-day period for review provided by paragraph (a) of this section, it appears that the application's form or substance fails to meet the requirements of this part, the Commission shall notify the applicant seeking registration that the Commission is terminating review under this section and will review the proposal under the time period and procedures of section 6 of the Act. This termination notification will state the nature of the issues raised and the specific condition of registration that the applicant would violate, appears to violate, or the violation of which cannot be ascertained from the application. Within ten days of receipt of this termination notification, the applicant seeking registration may request that the Commission render a decision whether to register the applicant or to institute a proceeding to deny the proposed application under procedures specified in section 6 of the Act by notifying the Commission that the applicant views its submission as complete and final as submitted.

(c) *Withdrawal of application for registration.* An applicant for registration

may withdraw its application by filing with the Commission such a request. 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) *Guidance for applicants and registrants.* Appendix A to this part provides guidance to applicants and registrants on how the core principles specified in section 5b(c)(2) of the Act may be satisfied.

(e) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight or the Director's delegates, with the concurrence of the General Counsel or the General Counsel's delegates, the authority to exercise the functions under paragraphs (a) and (b) of this section and under § 39.5.

(2) The Director of the Division of Clearing and Intermediary Oversight may submit to the Commission for its consideration any matter which has been delegated in this paragraph.

(3) Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (e)(1) of this section.

[66 FR 45609, Aug. 29, 2001, as amended at 67 FR 62352, Oct. 7, 2002]

**§ 39.4 Procedures for implementing derivatives clearing organization rules and clearing new products.**

(a) *Request for approval of rules.* An applicant for registration, or 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.

(b) *Self-certification of rules.* Proposed new or amended rules of a derivatives