

§ 39.5

(2) *Acceptance of certain new products for clearing.* A derivatives clearing organization that accepts for clearing a new product that is not traded on a designated contract market or a registered derivatives transaction execution facility must submit to the Commission any rules establishing the terms and conditions of the product that make it acceptable for clearing with a certification that the clearing of the product and the rules and terms and conditions comply with the Act and the rules thereunder pursuant to the procedures of § 40.2 of this chapter.

(d) *Orders regarding competition.* An applicant or a registered derivatives clearing organization may request that the Commission issue an order concerning whether a rule or practice of the organization is the least anti-competitive means of achieving the objectives, purposes, and policies of the Act.

[66 FR 45609, Aug. 29, 2001, as amended at 67 FR 62878, Oct. 9, 2002]

§ 39.5 Information relating to derivatives clearing organization operations.

(a) Upon request by the Commission, a derivatives clearing organization shall file with the Commission such information related to its business as a clearing organization, including information relating to trade and clearing details, in the form and manner and within the time as specified by the Commission in the request.

(b) Upon request by the Commission, a derivatives clearing organization shall file with the Commission a written demonstration, containing such supporting data, information and documents, in the form and manner and within such time as the Commission may specify that the derivatives clearing organization is in compliance with one or more core principles as specified in the request.

(c) Information regarding transactions by large traders cleared by a derivatives clearing organization shall be filed with the Commission, in a form and manner acceptable to the Commission, by futures commission merchants, clearing members, foreign brokers or registered entities other than a derivatives clearing organization, as

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applicable. Provided, however, that if no such person or entity is required to file large trader information with the Commission, such information must be filed with the Commission by a derivatives clearing organization.

(d) Upon special call by the Commission, each futures commission merchant, clearing member or foreign broker shall provide information to the Commission concerning customer accounts or related positions cleared on a derivatives clearing organization or other multilateral clearing organization in the form and manner and within the time specified by the Commission in the special call.

§ 39.6 Enforceability.

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

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

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

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

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

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

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

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