

§ 39.1

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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) *Application Procedures. (1) 180-day review procedures.* An organization desiring to be registered as a derivatives clearing organization shall file electronically an application for registration with the Secretary of the Commission at its Washington, DC, headquarters. Except as provided under the 90-day review procedures described in paragraph (a)(3) of this section, 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. The Commission may approve or deny the application or, if deemed appropriate, register the applicant as a derivatives clearing organization subject to conditions.

(2) The following must be included:

(i) The application is labeled as being submitted pursuant to this Part 39;

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

(iii) The application includes a copy of the applicant’s rules;

(iv) The application demonstrates how the applicant is able to satisfy each of the core principles specified in section 5b(c)(2) of the Act;

(v) The applicant submits agreements entered into or to be entered into between or among the applicant, its operator/service provider or its participants, 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. The agreements must identify the services that will be provided. If a submitted agreement is not final and executed, the application must include evidence which constitutes reasonable assurances that such services will be provided as soon as operations require;

(vi) The applicant submits 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; and

(vii) 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.

(3) *Ninety-day review procedures.* An organization desiring to be registered as a derivatives clearing organization may request that its application be reviewed on a 90-day basis and that the applicant be registered as a derivatives clearing organization 90 days after the date of receipt of the application for registration by the Secretary of the

Commission. The 90-day period shall begin on the first business day (during the business hours defined in §40.1 of this chapter) that the Commission is in receipt of the application. Unless the Commission notifies the applicant during the 90-day period that the expedited review has been terminated pursuant to §39.3(b), the Commission will register the applicant as a derivatives clearing organization during the 90-day period. If deemed appropriate by the Commission, the registration may be subject to such conditions as the Commission may stipulate.

(i) The application must include the items described in §§39.3(a)(2)(i) through (vi); and

(ii) The applicant must 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.

(b) *Termination of 90-day review.* (1) During the 90-day period for review pursuant to paragraph (a)(3) of this section, the Commission shall notify the applicant seeking registration that the Commission is terminating review under this section and will review the proposal under the 180-day time period and procedures of Section 6(a) of the Act, if it appears to the Commission that the application:

(i) Is materially incomplete;

(ii) Fails in form or substance to meet the requirements of this part;

(iii) Raises novel or complex issues that require additional time for review; or

(iv) Is amended or supplemented in a manner that is inconsistent with §39.3(a)(3)(ii).

(2) This termination notification shall identify the deficiencies in the application that render it incomplete, the manner in which the application fails to meet the requirements of this part, or the novel or complex issues that require additional time for review. The Commission shall also terminate review under this section if requested in writing to do so by the applicant.

(c) *Withdrawal of application for registration.* An applicant for registration may withdraw its application submitted pursuant to paragraphs (a)(1) through (2) or (a)(3) of this section 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) *Reinstatement of dormant registration.* Before listing or relisting contracts for clearing, a dormant registered derivatives clearing organization as defined in §40.1 of this chapter must reinstate its registration under the procedures of paragraph (a)(1) through (2) or (a)(3) 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) *Request for vacation of registration.* A registered derivatives clearing organization may vacate its registration under Section 7 of the Act by filing electronically such a request with the Commission at its Washington, DC headquarters. 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 facility was designated by the Commission.

(g) *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 notify an applicant seeking designation under Section 6(a) of the Act that the application is materially incomplete and the running of the 180-day period is stayed or that the 90-day review under paragraph (a)(3) of this section is terminated.

(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.

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

[71 FR 1966, Jan. 12, 2006]

§ 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 clearing organization not voluntarily submitted for prior Commission approval pursuant to paragraph (a) of this section must be submitted to the Commission with a certification that the proposed new rule or rule amendment complies with the Act and rules thereunder pursuant to the procedures of § 40.6 of this chapter.

(c) *Acceptance of new products for clearing.* (1) A dormant derivatives clearing organization within the meaning of § 40.1 of this chapter may not accept for clearing a new product until its registration as a derivatives clearing organization is reinstated under the procedures of § 39.3 of this part; provided however, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

(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 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