

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

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**Exact name of Applicant as specified in charter**

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**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.

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**GENERAL INFORMATION**

1. Name under which business is or will be conducted, if different than name specified above (include acronyms, if any):

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2. If name of derivatives clearing organization is being amended, state previous derivatives clearing organization name:

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3. Additional contact information:

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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

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\_\_\_\_\_  
\_\_\_\_\_

**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

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Name and Title

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Office Phone Number Mobile Phone Number

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Mailing address E-mail Address

- b. The individual responsible for handling questions regarding the Applicant’s financial statements

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Name and Title

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Office Phone Number Mobile Phone Number

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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

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Name and Title

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Office Phone Number Mobile Phone Number

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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

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Name and Title

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Office Phone Number Mobile Phone Number

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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

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Name and Title

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Office Phone Number Mobile Phone Number

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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.

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Print Name and Title

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Street Address

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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.

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Name of Applicant

By: \_\_\_\_\_  
Manual Signature of Duly Authorized Person

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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:

<b>FORM DCO - SAMPLE SETTLEMENT CYCLE CHART</b> [Specify U.S. Dollar or other currency as applicable]	
<b>TRADE DATE = T</b> [INSERT TIME ZONE] [INSERT EXACT TIMES BELOW]	<b>EXAMPLE OF SETTLEMENT ACTIVITY FOR WHICH TIMES SHOULD BE PROVIDED</b>
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.