

## COMMODITY FUTURES TRADING COMMISSION

### SUBPART C ELECTION FORM

**GENERAL INSTRUCTIONS: Intentional misstatements or omissions of fact may constitute federal criminal violations (7 U.S.C. 13 and 18 U.S.C. 1001).**

#### DEFINITIONS

Unless the context requires otherwise, all terms used in this Subpart C Election Form have the same meaning as in the Commodity Exchange Act (“Act”), and in the General Rules and Regulations of the Commodity Futures Trading Commission (“Commission”) thereunder. All references to Commission regulations are found at 17 CFR Ch. I.

For purposes of this Subpart C Election Form, the term “Applicant” shall mean a derivatives clearing organization that is filing this Subpart C Election Form with a Form DCO as part of an application for registration as a derivatives clearing organization pursuant to section 5b of the Act and 17 CFR 39.3(a).

#### GENERAL INSTRUCTIONS

1. Any derivatives clearing organization requesting an election to become subject to subpart C of part 39 of the Commission’s regulations must file this Subpart C Election Form. The Subpart C Election Form includes the election to be subject to the provisions of subpart C of part 39 of the Commission’s regulations, certain required certifications, disclosures, and exhibits, and any supplements or amendments thereto filed pursuant to 17 CFR 39.31(b) or (c) (collectively, the “Subpart C Election Form”).
2. Individuals’ names, except the executing signature, shall be given in full (Last Name, First Name, Middle Name).
3. The signatures required in this Subpart C Election Form shall be the manual signatures of a duly authorized representative of the derivatives clearing organization as follows: If the Subpart C Election Form is filed by a corporation, it must be signed in the name of the corporation by a principal officer duly authorized; if filed by a limited liability company, it must be signed in the name of the limited liability company by a manager or member duly authorized to sign on the limited liability company’s behalf; if filed by a partnership, it must be signed in the name of the partnership by a general partner duly authorized; if filed by an unincorporated organization or association which is not a partnership, it must be signed in the name of such organization or association by the managing agent, *i.e.*, a duly authorized person who directs or manages or who participates in the directing or managing of its affairs.
4. All applicable items must be answered in full.
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 Subpart C Election Form from any Applicant seeking registration as a derivatives clearing organization and from any registered derivatives clearing organization.
6. Disclosure of the information specified in this Subpart C Election Form is mandatory prior to the processing of the election to become a derivatives clearing organization subject to the provisions of subpart C of part 39 of the Commission’s regulations. The Commission may determine that additional information is required in order to process such election.
7. A Subpart C Election Form that is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Subpart C Election Form, however, shall not constitute a finding that the Subpart C Election Form is acceptable as filed or that the information is true, current or complete.
8. As provided in 17 CFR 39.31(d), except in cases where a derivatives clearing organization submits a request for confidential treatment with the Secretary of the Commission pursuant to the Freedom of Information Act and 17 CFR 145.9, information supplied in this Subpart C Election Form will be included routinely in the public files of the Commission and will be made available for inspection by any interested person.

## **APPLICATION AMENDMENTS**

1. 17 CFR 39.31(b)(3) and (c)(4) require a derivatives clearing organization that has submitted a Subpart C Election Form to promptly amend its Subpart C Election Form if it discovers a material omission or error in, or if there is a material change in, the information provided to the Commission in the Subpart C Election Form or other information provided in connection with the Subpart C Election Form.
2. When amending a Subpart C Election Form, a derivatives clearing organization must re-file the Election and Certifications page, amended if necessary, and including all required executing signatures, and attach thereto revised exhibits or other materials marked to show changes, as applicable.

## **WHERE TO FILE**

1. This Subpart C Election Form must be filed electronically with the Secretary of the Commission in the format and manner specified by the Commission.
2. Any supplemental information must be filed electronically with the Division of Clearing and Risk, or any successor division, in the format and manner specified by the Commission.

**COMMODITY FUTURES TRADING COMMISSION**

**SUBPART C ELECTION FORM**

**ELECTION AND CERTIFICATIONS**

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**Exact Name of the Derivatives Clearing Organization  
(as set forth in its charter, if an Applicant,  
or as set forth in its most recent order of registration, if registered with the Commission)**

- Check here and complete sections 1 and 3 below, if the organization is an Applicant.
- Check here and complete sections 2 and 3 below, if the organization currently is registered with the Commission as a derivatives clearing organization.
- 1. The derivatives clearing organization named above hereby elects to become subject to the provisions of subpart C of part 39 of the Commission's regulations in the event that the Commission approves its application for registration as a derivatives clearing organization.

The derivatives clearing organization and the undersigned each certify that, in the event that the Commission approves the derivatives clearing organization's application for registration and permits its election to become subject to subpart C of part 39 of the Commission's regulations, the derivatives clearing organization will remain in compliance with the provisions contained in subpart C of part 39 of the Commission's regulations until the election is rescinded pursuant to 17 CFR 39.31(e).

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Name of Derivatives Clearing Organization

By: \_\_\_\_\_

Manual Signature of Duly Authorized Person

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Print Name and Title of Signatory

- 2. The derivatives clearing organization named above hereby elects to become subject to the provisions of subpart C of part 39 of the Commission's regulations as of:

\_\_\_\_\_ ("Effective Date")

[insert date, which must be **at least 10 business days after the date this Subpart C Election Form is filed with the Commission**].

The derivatives clearing organization and the undersigned each certify that, as of the Effective Date set forth above, the derivatives clearing organization shall be in compliance with subpart C of part 39 of the Commission's regulations, and that the derivatives clearing organization will remain in compliance with provisions contained in subpart C of part 39 of the Commission's regulations until this election is rescinded pursuant to 17 CFR 39.31(e).

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Name of Derivatives Clearing Organization

By: \_\_\_\_\_

Manual Signature of Duly Authorized Person

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Print Name and Title of Signatory

3. The derivatives clearing organization named above has duly caused this Subpart C Election Form (which includes, as an integral part thereof, the Election and Certifications and all Disclosures and Exhibits) to be signed on its behalf by its duly authorized representative as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The derivatives clearing organization and the undersigned each represent hereby that, to the best of their knowledge, all information contained in this Subpart C Election Form is true, current and complete in all material respects. It is understood that all required items including, without limitation, the Election and Certifications and Disclosures and Exhibits, are considered integral parts of this Subpart C Election Form.

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Name of Derivatives Clearing Organization

By: \_\_\_\_\_

Manual Signature of Duly Authorized Person

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Print Name and Title of Signatory

**COMMODITY FUTURES TRADING COMMISSION**

**PART 39, SUBPART C ELECTION FORM**

**DISCLOSURES AND EXHIBITS**

Each derivatives clearing organization that requests an election to become subject to the provisions set forth in subpart C of part 39 of the Commission's regulations shall provide the Disclosures and Exhibits set forth below:

**DISCLOSURES:**

The derivatives clearing organization shall publish on its website in a readily identifiable location, the following documents that are required to be completed pursuant to 17 CFR 39.37:

1. The derivatives clearing organization's responses to the Disclosure Framework for Financial Market Infrastructures ("Disclosure Framework"), published by the Committee on Payments and Market Infrastructure ("CPMI") and the Board of the International Organization of Securities Commissions ("IOSCO"). The derivatives clearing organization's responses must be completed in accordance with section 2.0 and Annex A of the Disclosure Framework and must fully explain how the derivatives clearing organization observes the Principles for Financial Market Infrastructures ("PFMIs") published by CPMI-IOSCO.

Provide the URL to the specific page on the derivatives clearing organization's website where its responses to the Disclosure Framework may be found:

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2. The most recent quantitative disclosure prepared by the derivatives clearing organization that satisfies the Public Quantitative Disclosure Standards for Central Counterparties published by CPMI-IOSCO ("Quantitative Disclosure").

If applicable, provide the URL to the specific page on the derivatives clearing organization's website where its Quantitative Disclosure may be found:

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**EXHIBITS:**

**EXHIBIT INSTRUCTIONS:**

1. The derivatives clearing organization must include a Table of Contents listing each Exhibit required by this Subpart C Election Form.

2. If the derivatives clearing organization is an Applicant, in its Form DCO, the derivatives clearing organization may summarize such information and provide a cross-reference to the Exhibit in this Subpart C Election Form that contains the required information.

The derivatives clearing organization shall provide the following Exhibits to this Subpart C Election Form:

#### **EXHIBIT A – COMPLIANCE WITH SUBPART C**

Attach, as Exhibit A, a regulatory compliance chart that sets forth citations to the relevant rules, policies, and procedures of the derivatives clearing organization that address §§ 39.32-39.39 of the Commission’s regulations and a narrative summary of the manner in which the derivatives clearing organization will comply with each regulation.

The narrative summary shall: (a) specifically and meaningfully explain the manner in which the derivatives clearing organization will comply with each such regulation; (b) sufficiently integrate references to documents contained in the exhibits to this Subpart C Election Form to clearly convey the derivatives clearing organization’s policies and procedures with respect to each regulation; and (c) readily identify within such exhibits those derivatives clearing organization rules and governing documents that support the certifications set forth in this Subpart C Election Form. The narrative summary may be included as part of the compliance chart required by Exhibit A or a separate document within Exhibit A.

All citations and compliance summaries shall be separated by individual regulation and shall be clearly labeled with the corresponding regulation.

#### **EXHIBIT B – FINANCIAL RESOURCES**

Attach, as **Exhibit B**, information and documents that demonstrate compliance with the financial resource requirements set forth in § 39.33 of the Commission’s regulations, including but not limited to:

- a. Valuation of financial resources – Attach as **Exhibit B-1**, a demonstration that assessments for additional guaranty fund contributions (*i.e.*, guaranty fund contributions that are not prefunded) are not included in calculating the financial resources available to meet the derivatives clearing organization’s obligations under § 39.33(a) or § 39.11(a)(1).
- b. Liquidity resources – Attach as **Exhibit B-2**, a demonstration that the derivatives clearing organization maintains eligible liquidity resources as required under § 39.33(c).
- c. Liquidity providers – Attach as **Exhibit B-3**, a demonstration that the derivatives clearing organization’s liquidity providers meet the requirements as set forth in § 39.33(d).
- d. Documentation of financial resources and liquidity resources – Attach as **Exhibit B-4**, a demonstration that the derivatives clearing organization documents its supporting rationale for, and has appropriate governance arrangements relating to, the amount of total financial resources it maintains pursuant to § 39.33(a) and the amount of total liquidity resources it maintains pursuant to § 39.33(c).

## **EXHIBIT C – SYSTEM SAFEGUARDS**

Attach, as **Exhibit C**, information and documents that demonstrate compliance with the system safeguards requirements set forth in § 39.34 of the Commission’s regulations, including but not limited to:

- a. Attach as **Exhibit C-1**, a demonstration that, notwithstanding § 39.18(c)(2), the business continuity and disaster recovery plan described in § 39.18(c)(1) and the physical, technological, and personnel resources described in § 39.18(c)(1) enable the derivatives clearing organization to recover its operations and resume daily processing, clearing, and settlement no later than two hours following the disruption, for any disruption including a wide-scale disruption.
- b. Attach as **Exhibit C-2**, a demonstration that the derivatives clearing organization maintains a degree of geographic dispersal of physical, technological and personnel resources consistent with the requirements set forth in § 39.34(b).
- c. Attach as **Exhibit C-3**, a demonstration that the derivatives clearing organization conducts regular, periodic tests of its business continuity and disaster recovery plans and resources and its capacity to achieve the required recovery time objective in the event of a wide-scale disruption, and that the provisions of § 39.18(e) apply to such testing.

## **EXHIBIT D – DEFAULT RULES AND PROCEDURES FOR UNCOVERED LOSSES OR SHORTFALLS**

Attach, as **Exhibit D**, information and documents that demonstrate compliance with the requirements for default rules and procedures for uncovered losses or shortfalls set forth in § 39.35 of the Commission’s regulations, including but not limited to:

- a. Allocation of uncovered credit losses – Attach as **Exhibit D-1**, a demonstration that the derivatives clearing organization has explicit rules and procedures that address fully any loss arising from any individual or combined default relating to any clearing member’s obligations to the derivatives clearing organization.
- b. Allocation of uncovered liquidity shortfalls – Attach as **Exhibit D-2**, a demonstration that the derivatives clearing organization has established rules and/or procedures that enable it to promptly meet all of its settlement obligations, on a same day and, as appropriate, intraday and multiday basis, in the context of the occurrence of the scenarios set forth in § 39.35(b)(1)(i) and (ii). The derivatives clearing organization must demonstrate how such rules and procedures comply with the requirements of § 39.35(b)(2).

## **EXHIBIT E – RISK MANAGEMENT**

Attach, as **Exhibit E**, information and documents that demonstrate compliance with the risk management requirements set forth in § 39.36 of the Commission’s regulations, including but not limited to:

- a. Stress tests of financial resources – Attach as **Exhibit E-1**, a demonstration that the derivatives clearing organization conducts stress tests of its financial resources in accordance with the standards and practices set forth in § 39.36(a);

- b. Sensitivity analysis of margin model – Attach as **Exhibit E-2**, a demonstration that the derivatives clearing organization conducts on a monthly basis or more frequently as appropriate, a sensitivity analysis of its margin models to analyze and monitor model performance and overall margin coverage. The derivatives clearing organization shall demonstrate that the sensitivity analysis is conducted on both actual and hypothetical positions and in accordance with the requirements set forth in § 39.36(b)(2) and (3);
- c. Stress tests of liquidity resources – Attach as **Exhibit E-3**, a demonstration that the derivatives clearing organization conducts stress tests of its liquidity resources in accordance with the standards and practices set forth in § 39.36(c);
- d. Theoretical and empirical properties – Attach as **Exhibit E-4**, a demonstration that the derivatives clearing organization conducts an assessment of the theoretical and empirical properties of its margin model for all products it clears;
- e. Validation – Attach as **Exhibit E-5**, a demonstration that the derivatives clearing organization conducts on an annual basis, a full validation of its financial risk management model and its liquidity risk management model in accordance with the requirements set forth in § 39.36(e);
- f. Custody and investment risk – Attach as **Exhibit E-6**, a demonstration that the custody and investment arrangements of the derivatives clearing organization’s own funds and assets are subject to the same requirements as those specified in § 39.15 for the funds and assets of clearing members, and apply to the derivatives clearing organization’s own funds and assets to the same extent as if such funds and assets belonged to clearing members; and
- g. Settlement banks – Attach as **Exhibit E-7**, a demonstration that the derivatives clearing organization, monitors, manages, and limits its credit and liquidity risks arising from its settlement banks; establishes and monitors adherence to strict criteria for its settlement banks that take account of, among other things, their regulation and supervision, creditworthiness, capitalization, access to liquidity, and operational reliability; and monitors and manages the concentration of credit and liquidity exposures to its settlement banks.

#### **EXHIBIT F – RECOVERY AND WIND-DOWN**

Attach, as **Exhibit F**, information and documents that demonstrate compliance with the recovery and orderly wind-down requirements set forth in § 39.39 of the Commission’s regulations, including but not limited to:

- a. Recovery and wind-down plans – Attach as **Exhibit F-1** the derivatives clearing organization’s recovery plan, orderly wind-down plan, supporting information for these plans, and a demonstration that the plans comply with the requirements of § 39.39(c).
- b. Financial resources to support recovery – Attach as **Exhibit F-2**, a narrative summary that demonstrates how the financial statements filed with the Commission pursuant to §§ 39.11 and 39.33 demonstrate that the derivatives clearing organization maintains sufficient unencumbered liquid financial assets, funded by the equity of its owners, to implement its recovery or wind-down plans. The narrative summary shall include a description of how the derivatives clearing organization complies with the requirements of § 39.39(d).
- c. Additional financial resources – Attach as **Exhibit F-3**, a demonstration that the derivatives clearing organization maintains viable plans for raising additional financial resources as required under § 39.39(e).