

from any person and which is privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form and clearly labeled “Confidential.”<sup>45</sup>

Because mail delivered to the FTC by the United States Postal Service is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: <https://ftcpublic.commentworks.com/ftc/tsrcalleridanprm> (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink <https://ftcpublic.commentworks.com/ftc/tsrcalleridanprm>. If this Notice appears at <http://www.regulations.gov/search/index.jsp>, you may also file an electronic comment through that Web site. The Commission will consider all comments that [regulations.gov](http://www.regulations.gov) forwards to it. You may also visit the FTC Web site at <http://www.ftc.gov> to read the Notice and the news release describing it.

A comment filed in paper form should reference the “Advance Notice of Proposed Rulemaking Concerning Caller Identification, Matter P104405” both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-113 (Annex Q), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC requests that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (“FTC Act”) and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives,

<sup>45</sup> The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy, at <http://www.ftc.gov/ftc/privacy.shtm>.

By direction of the Commission.

**Donald S. Clark,**  
Secretary.

[FR Doc. 2010–31390 Filed 12–14–10; 8:45 am]

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 1, 21, and 39

RIN 3038–AC98

#### Information Management Requirements for Derivatives Clearing Organizations

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is proposing regulations to implement certain core principles for derivatives clearing organizations (DCOs) as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The proposed regulations would establish standards for compliance with DCO Core Principles J (Reporting), K (Recordkeeping), L (Public Information), and M (Information Sharing). Additionally, the Commission is proposing technical amendments to parts 1 and 21 in connection with the proposed regulations. Finally, the Commission also is proposing to delegate to the Director of the Division of Clearing and Intermediary Oversight the Commission’s authority to perform certain functions in connection with the proposed regulations.

**DATES:** Submit comments on or before February 14, 2011.

**ADDRESSES:** You may submit comments, identified by RIN number 3038–AC98, by any of the following methods:

- Agency Web site, via its Comments

Online process: <http://comments.cftc.gov>. Follow the

instructions for submitting comments through the Web site.

- **Mail:** David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

- **Hand Delivery/Courier:** Same as mail above.

- **Federal eRulemaking Portal:** <http://www.Regulations.gov>. Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9.<sup>1</sup>

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Phyllis P. Dietz, Associate Director, 202–418–5449, [pdietz@cftc.gov](mailto:pdietz@cftc.gov), or Jacob Preiserowicz, Attorney-Advisor, 202–418–5432, [jpreiserowicz@cftc.gov](mailto:jpreiserowicz@cftc.gov), Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Background
- II. Proposed Regulations
  - A. Reporting Requirements
    1. Information Required on a Daily Basis
    2. Information Required on a Quarterly Basis
    3. Information Required on an Annual Basis
    4. Event-Specific Reporting
      - (a) Decrease in Financial Resources

<sup>1</sup> Commission regulations referred to herein are found at 17 CFR Ch. 1 (2010). They are accessible on the Commission’s Web site at <http://www.cftc.gov>.

- (b) Decrease in Ownership Equity
  - (c) Six-Month Liquid Asset Requirement
  - (d) Change in Working Capital
  - (e) Intraday Initial Margin Call
  - (f) Delay in Collection of Initial Margin
  - (g) Management of Clearing Member Positions
  - (h) Change in Ownership or Corporate or Organizational Structure
  - (i) Change in Key Personnel
  - (j) Credit Facility Funding Arrangement Change
  - (k) Rule Enforcement
  - (l) Financial Condition and Events
5. Technical Amendments
- B. Recordkeeping Requirements
- C. Public Information
1. Availability of Information
  2. Public Disclosure
  - D. Information Sharing
- III. Effective Date
- IV. Related Matters
- A. Regulatory Flexibility Act
- B. Paperwork Reduction Act
1. Information Provided by Reporting Entities/Persons
  2. Information Collection Comments
- C. Cost-Benefit Analysis

## I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act.<sup>2</sup> Title VII of the Dodd-Frank Act<sup>3</sup> amended the Commodity Exchange Act (CEA)<sup>4</sup> to establish a comprehensive new regulatory framework to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.

Section 725(c) of the Dodd-Frank Act amended Section 5b(c)(2) of the CEA, which sets forth core principles with which a DCO must comply to be registered and to maintain registration as a DCO. The core principles were added to the CEA by the Commodity Futures Modernization Act of 2000 (CFMA).<sup>5</sup> The Commission did not adopt implementing rules and

regulations, but instead promulgated guidance for DCOs on compliance with the core principles.<sup>6</sup> Under Section 5b(c)(2), as amended by the Dodd-Frank Act, Congress expressly confirmed that the Commission may adopt implementing rules and regulations pursuant to its rulemaking authority under Section 8a(5) of the CEA.<sup>7</sup> This rulemaking is one of a series that will, in its entirety, propose regulations to implement all 18 DCO core principles.<sup>8</sup>

The Commission continues to believe that, where possible, each DCO should be afforded an appropriate level of discretion in determining how to operate its business within the statutory framework. At the same time, the Commission recognizes that specific bright-line regulations may be necessary in order to facilitate DCO compliance with a given core principle, and ultimately, to protect the integrity of the U.S. clearing system. Accordingly, in developing the proposed regulations, the Commission has endeavored to strike an appropriate balance between establishing general prudential standards and prescriptive requirements.

Core Principle J, Reporting, as amended by the Dodd-Frank Act, requires a DCO to provide the Commission with all information that the Commission determines to be necessary to conduct oversight of the DCO.<sup>9</sup> The Commission is proposing to adopt § 39.19 to establish requirements that a DCO will have to meet in order to comply with Core Principle J.

Core Principle K, Recordkeeping, as amended by the Dodd-Frank Act, requires a DCO to maintain records of all activities related to the business of the DCO as a DCO, in a form and manner that is acceptable to the

Commission and for a period of not less than 5 years.<sup>10</sup> The Commission is proposing to adopt § 39.20 to establish requirements that a DCO will have to meet in order to comply with Core Principle K.

Core Principle L, Public Information, as amended by the Dodd-Frank Act, requires a DCO to provide market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the DCO's services.<sup>11</sup> A DCO is, more specifically, required to make available to market participants information concerning the rules and operating and default procedures governing its clearing and settlement systems and also disclose publicly and to the Commission the terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO, each clearing and other fee charged to members,<sup>12</sup> the DCO's margin-setting methodology, daily settlement prices, and other matters relevant to participation in the DCO's clearing and settlement activities.<sup>13</sup> The Commission is proposing to adopt § 39.21 to establish requirements that a DCO will have to meet in order to comply with Core Principle L.

Core Principle M, Information Sharing, as amended by the Dodd-Frank Act, requires a DCO to enter into and abide by terms of each appropriate and applicable domestic and international information-sharing agreement and use relevant information obtained under such agreements in carrying out its risk management program.<sup>14</sup> The

<sup>10</sup> See Section 5b(c)(2)(K) of the CEA; 7 U.S.C. 7a-1(c)(2)(K). Prior to amendment by the Dodd-Frank Act, Core Principle K provided that "The [DCO] applicant shall maintain records of all activities related to the business of the applicant as a [DCO] in a form and manner acceptable to the Commission for a period of 5 years."

<sup>11</sup> See Section 5b(c)(2)(L) of the CEA; 7 U.S.C. 7a-1(c)(2)(L).

<sup>12</sup> The statutory language refers to fees charged to "members and participants," and the Commission interprets this phrase to mean fees charged to "clearing members," a term which it proposes to define as "any person that has clearing privileges such that it can process, clear and settle trades through a derivatives clearing organization on behalf of itself or others. The derivatives clearing organization need not be organized as a membership organization." The Commission is proposing to amend the definition of "clearing member" in § 1.3(c) of its regulations, as part of a separate proposed rulemaking.

<sup>13</sup> This core principle has been expanded greatly. Prior to amendment by the Dodd-Frank Act, Core Principle L provided that "The [DCO] applicant shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) available to market participants."

<sup>14</sup> See Section 5b(c)(2)(M) of the CEA, 7 U.S.C. 7a-1(c)(2)(M). The Dodd-Frank Act made minor

<sup>6</sup> See 17 CFR part 39, app. A.

<sup>7</sup> See 7 U.S.C. 7a-1(c)(2). Section 8a(5) of the CEA authorizes the Commission to promulgate such Regulations "as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of [the CEA]." 7 U.S.C. 12a(5).

<sup>8</sup> See 75 FR 63732 (Oct. 18, 2010) (proposing regulations to implement Core Principle P (Conflicts of Interest); and 75 FR 63113 (Oct. 14, 2010) (proposing regulations to implement Core Principle B (Financial Resources)). Concurrent with issuing this notice, the Commission also is proposing regulations to implement Core Principles A (Compliance), H (Rule Enforcement), N (Antitrust Considerations), and R (Legal Risk). The Commission expects to issue two additional notices of proposed rulemaking to implement DCO core principles.

<sup>9</sup> See Section 5b(c)(2)(J) of the CEA; 7 U.S.C. 7a-1(c)(2)(J). Prior to amendment by the Dodd-Frank Act, Core Principle J provided that "The [DCO] applicant shall provide to the Commission all information necessary for the Commission to conduct the oversight function of the applicant with respect to the activities of the [DCO]."

<sup>2</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at <http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm>.

<sup>3</sup> Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

<sup>4</sup> 7 U.S.C. 1 *et seq.*

<sup>5</sup> See Commodity Futures Modernization Act of 2000, Public Law 106-554, 114 Stat. 2763 (2000).

Commission is proposing to adopt § 39.22 to codify the statutory requirement.

Section 805(a) of the Dodd-Frank Act allows the Commission to prescribe regulations for those DCOs that the Financial Stability Oversight Council has determined are systemically important financial market utilities.<sup>15</sup> The Commission is not proposing to adopt additional or enhanced requirements for systemically important DCOs (SIDCOs) in connection with the proposed rules to implement Core Principles J, K, L and M. This is based on the Commission's view that rigorous information management requirements should apply equally to all DCOs, regardless of their size or systemic importance.

The Commission requests comment on all aspects of the proposed rules, as well as comment on the specific provisions and issues highlighted in the discussion below.

## II. Proposed Regulations

### A. Reporting Requirements

Proposed § 39.19 would require certain reports to be made by the DCO to the Commission: (1) On a periodic basis (daily, quarterly or annually), (2) where the reporting requirement is triggered by the occurrence of a significant event; and (3) upon request by the Commission.<sup>16</sup> Unless otherwise specified by the Commission or its designee, each DCO would have to submit the information required by this section to the Commission electronically and in a form and manner prescribed by the Commission.

The Commission has determined that the information required by proposed § 39.19 would enable it to conduct more effective and more streamlined financial oversight of a DCO. In this regard, obtaining the required data would enhance the Commission's ability to conduct a more in-depth and timely analysis of a DCO's activities, thereby enabling the Commission to identify insipient problems and address them at an earlier stage. This is particularly important in connection with a DCO that clears swaps, in light of the

changes in the language of Core Principle M, but did not make any substantive changes.

<sup>15</sup> Section 804 of the Dodd-Frank Act authorizes the Financial Stability Oversight Council to designate financial market utilities involved in clearing and settlement as "systemically important."

<sup>16</sup> Requirements that certain information be submitted upon request of the Commission are currently found in the Commission's regulations at paragraphs (a) and (b) of § 39.5. 17 CFR 39.5. See *infra* discussion of technical amendments regarding §§ 39.5(a) and 39.5(b) at Section II.A.5. of this notice.

increased risk that swaps may pose to DCOs.<sup>17</sup>

Unless otherwise specified by the Commission or its designee, any stated time in these proposed regulations would be Central time for information concerning DCOs located in that time zone, and Eastern time for information concerning all other DCOs (including clearing organizations registered as DCOs but located outside the United States).<sup>18</sup>

#### 1. Information Required on a Daily Basis

Currently, the Commission receives initial margin data from several, but not all DCOs and not necessarily on a daily basis. The Commission receives variation margin data through the Shared Market Information System (SHAMIS), which is maintained by The Clearing Corporation, a subsidiary of IntercontinentalExchange, Inc. However, the Commission has found it difficult to obtain a complete data set from SHAMIS on a regular basis and in the necessary format. Moreover, not all DCOs participate in SHAMIS. The Commission is therefore proposing regulations that would require reporting by all DCOs on a daily basis. By requiring both sets of data as well as intraday initial margin calls<sup>19</sup> to be reported directly to the Commission, the Commission would be better positioned to conduct risk surveillance activities efficiently, to monitor the financial health of the DCO, and to detect any unusual activity in a timely manner.

Proposed § 39.19(c)(1)(i) would require a DCO to report both the initial margin requirement for each clearing member, by customer origin and house origin,<sup>20</sup> and the initial margin on deposit for each clearing member, by origin. Proposed § 39.19(c)(1)(ii) would require a DCO to report the daily variation margin collected and paid by

<sup>17</sup> The Commission notes that DCOs may be subject to additional reporting requirements that are not covered by Core Principle J and therefore are not addressed in proposed § 39.19, e.g., requirements for reporting to a swap data repository under proposed part 45 of the Commission's regulations.

<sup>18</sup> See proposed § 39.19(b)(2).

<sup>19</sup> See *infra* discussion of proposed Regulation 39.19(c)(4)(v) which would require intraday reporting of initial margin calls at Section II.A.4.(e) of this notice.

<sup>20</sup> In a separate rulemaking, the Commission is proposing to define the terms "customer account or customer origin" and "house account or house origin" in proposed § 39.1(b). "Customer account or customer origin" would be defined as a clearing member's account held on behalf of customers, as defined in § 1.3(k) of the Commission's regulations, and would clarify that a customer account is also a futures account, as that term is defined by § 1.3(vv). "House account or house origin" would be defined as a clearing member's combined proprietary accounts, as defined in § 1.3(y).

the DCO. The report would separately list the mark-to-market amount collected from or paid to each clearing member, by origin.<sup>21</sup>

Proposed § 39.19(c)(1)(iii) would require the DCO to report all other cash flows relating to clearing and settlement including, but not limited to, option premiums and payments related to swaps such as coupon amounts, collected from or paid to each clearing member, by origin. This data, supplementing the initial margin and variation margin data, would provide the Commission with a more complete picture of the financial risk profile of the DCO and its clearing members.

Proposed § 39.19(c)(1)(iv) would require a DCO to report the end-of-day positions for each clearing member, by origin. Although the Commission currently receives large trader reports that are essential to an understanding of significant financial risk exposures, receipt of the proposed reports directly from the DCO would facilitate the ability of the Commission to evaluate the risk of each DCO as well as the aggregate financial risk across all DCOs.

Proposed § 39.19(c)(1) would require the report to be compiled as of the end of each trading day and to be submitted to the Commission by 10 a.m. the following business day. Although the proposed daily reporting requirements would be new, the Commission notes that in the ordinary course of a DCO conducting its clearing and settlement business, the information required to be reported is already known or is readily ascertainable by a DCO.

#### 2. Information Required on a Quarterly Basis

The Commission recently proposed a new § 39.11(f)(1) under which, at the end of each fiscal quarter, or at any time upon Commission request, a DCO would be required to report to the Commission: (i) The amount of financial resources necessary to meet the requirements set forth in the regulation; and (ii) the value of each financial resource available to meet those requirements.<sup>22</sup> The DCO would have to include with the report its financial statements, including the balance sheet, income statement, and statement of cash flows of the DCO or its parent company. If one of the financial resources a DCO is using to meet the regulation's requirements is a guaranty fund, the DCO would also have to report the value

<sup>21</sup> This requirement would apply to options transactions only to the extent a DCO uses futures-style margining for options.

<sup>22</sup> See 75 FR 63113 (Oct. 14, 2010) (proposing DCO financial resources requirements pursuant to Core Principle B).

of each individual clearing member's guaranty fund deposit. Proposed § 39.11(f)(3) would require a DCO to provide the Commission with sufficient documentation that explains both the methodology it used to calculate its financial requirements and the basis for its determinations regarding valuation and liquidity. The DCO also would have to provide copies of any agreements establishing or amending a credit facility, insurance coverage, or other arrangement that evidences or otherwise supports its conclusions.

By this notice, the Commission is proposing a new § 39.19(c)(2) under which a DCO would be required to report its financial resources in accordance with proposed § 39.11(f). The Commission notes that certain significant changes in financial resources would trigger additional reporting requirements under proposed § 39.19(c)(4)(i).<sup>23</sup>

### 3. Information Required on an Annual Basis

Proposed § 39.19(c)(3)(i) would require a DCO's chief compliance officer to submit the annual compliance report required by Section 725(b) of the Dodd-Frank Act<sup>24</sup> and proposed § 39.10.<sup>25</sup> The form and content of the annual compliance report would be codified in proposed § 39.10.

Proposed § 39.19(c)(3)(ii) would require a DCO to provide the Commission with audited year-end financial statements of the DCO, or if there are no financial statements available for the DCO itself, the consolidated audited year-end financial statements of the DCO's parent company.

Proposed § 39.19(c)(3)(iii) would require a DCO to submit to the Commission concurrently, the annual compliance report and audited financial statements required by (c)(3)(i) and (ii), respectively, not later than 90 days after the end of the DCO's fiscal year. The DCO would be able to request from the Commission an extension of time to submit either report, provided the DCO's failure to submit the report in a timely manner could not be avoided without unreasonable effort or expense. Extensions of the deadline would be granted at the discretion of the Commission.

<sup>23</sup> See *infra* discussion of proposed § 39.19(c)(4)(i) at Section II.A.4.(a) of this notice.

<sup>24</sup> Section 5b(i) of the CEA, 7 U.S.C. 7a-1(i).

<sup>25</sup> Section 39.10 is being proposed in a separate notice of proposed rulemaking.

### 4. Event-Specific Reporting

#### (a) Decrease in Financial Resources

Proposed § 39.19(c)(4)(i) would alert the Commission in a timely manner of a significant decrease in the value of a DCO's financial resources and the reason for the decrease, *e.g.*, whether such a decrease is an indicator of inadequate financial resources or if it is merely the result of a corresponding decrease in the margin requirements of the DCO. A DCO would be required to report certain decreases of the financial resources required to be maintained by proposed § 39.11(a) or, as applicable if the DCO is a SIDCO, proposed § 39.29(a):<sup>26</sup> (1) A 10 percent decrease from the total value of the financial resources reported on the last quarterly report submitted under proposed § 39.11(f); or (2) a 10 percent decrease from the total value of the financial resources as of the close of the previous business day. Reporting a decrease from the last quarterly report is intended to capture a situation where a DCO has a gradual decrease of financial resources. Reporting a decrease from the previous business day is intended to capture a situation where the DCO would experience a sudden decrease in financial resources over a short period of time. Although in such a situation the DCO may still have financial resources on hand that are greater in value than what was reported on the most recent quarterly report, the Commission believes that such a rapid drop in the value of a DCO's financial resources is a situation that warrants notice to the Commission. The Commission invites comment on possible alternatives regarding what would be considered a significant drop in the value of financial resources and whether there should be alternative reporting requirements.

The DCO would be required to report each such decrease to the Commission no later than one business day following the day the 10 percent threshold was reached. The report would have to include the total value of the financial resources: (1) As of the close of business the day the 10 percent threshold was

<sup>26</sup> Proposed § 39.11(a) would require a DCO to maintain sufficient financial resources to: (1) Meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions, and (2) cover its operating costs for at least one year, calculated on a rolling basis. Proposed § 39.29(a) would establish a different default resources standard for SIDCOs, requiring a SIDCO to maintain sufficient financial resources to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined financial exposure for the SIDCO in extreme but plausible market conditions. See 75 FR at 63118-19.

reached; and (2) if reporting a 10 percent decrease from the previous business day, the total value of the financial resources immediately prior to the 10 percent drop. This would include a breakdown of the value of each financial resource available as reported in each (1) and (2) above, calculated in accordance with the requirements of proposed § 39.11(d) or, as applicable if the DCO is a SIDCO, § 39.29(b),<sup>27</sup> including the value of each individual clearing member's guaranty fund deposit, if the DCO reports guaranty fund deposits as a financial resource. The report would also include a detailed explanation for the decrease.

#### (b) Decrease in Ownership Equity

Proposed § 39.19(c)(4)(ii) would require a DCO to notify the Commission of an event which the DCO knows or should reasonably know will cause a decrease of 20 percent in ownership equity from the last reported ownership equity balance. This notice would be required to be provided no later than two business days prior to the event. The last reported ownership equity balance would generally be on the quarterly or audited financial statements that would be required to be submitted by proposed § 39.19(c)(2)<sup>28</sup> or proposed § 39.19(c)(3)(ii),<sup>29</sup> respectively. For events which the DCO did not know, and reasonably could not know, would cause a decrease of 20 percent prior to the event occurring, the DCO would be able to report the triggering event no later than two business days after the decrease in ownership equity. Reports submitted prior to an event would have to include pro forma financial statements, reflecting the DCO's estimated future financial condition following the anticipated decrease and details describing the reason for the anticipated decrease. Reports submitted after the event would have to include current financial statements and details describing the reason for the decrease.

Proposed § 39.19(c)(4)(ii) is intended to alert the Commission of major planned events that would significantly affect ownership equity, most of which are events the DCO would have advance knowledge of, such as a reinvestment of capital, dividend payment, or major acquisition. The report would notify the Commission of such an event and would allow the Commission to

<sup>27</sup> Proposed § 39.11(d)(2) and § 39.29(b) address valuation of clearing member assessments for purposes of calculating default resources. See 75 FR at 63119-20.

<sup>28</sup> See *supra* discussion of proposed § 39.19(c)(2) at Section II.A.2. of this notice.

<sup>29</sup> See *supra* discussion of proposed § 39.19(c)(3)(ii) at Section II.A.3. of this notice.

evaluate its effect on the financial health of the DCO. The Commission invites commenters to propose alternative reporting requirements which would also provide the Commission with this type of information.

(c) Six-Month Liquid Asset Requirement

The Commission recently proposed a new § 39.11(e)(2) which would establish a six-month liquid asset requirement. It would require DCOs to maintain unencumbered liquid financial assets in the form of cash or highly liquid securities equal to six months operating costs.<sup>30</sup> In this notice, the Commission is proposing a new § 39.19(c)(4)(iii) that would require immediate notice to the Commission when a DCO knows or reasonably should know of a deficit in the six-month liquid asset requirement of proposed § 39.11(e)(2). The Commission believes that immediate notification of a DCO's deficit in the six-month liquid asset requirement is critical because of its potential impact on the ability of the DCO to continue to operate as a going concern.

(d) Change in Working Capital

Proposed § 39.19(c)(4)(iv) would require notice to the Commission no later than two business days after a DCO's working capital becomes negative. Working capital is defined as current assets minus current liabilities. The notice would include a balance sheet that reflects the DCO's working capital and an explanation as to the reason for the negative balance. The Commission believes that it is essential that it be made aware, in a timely manner, when a DCO has negative working capital, as this development can be an indicator of the declining financial health of a DCO.

The Commission invites comment as to whether this is a meaningful indicator of a DCO's financial condition, if there are alternative or additional measures that might be applied, and if the timing for notification is appropriate given the information to be provided.

(e) Intraday Initial Margin Calls to Clearing Members

Proposed § 39.19(c)(4)(v) would require a DCO to report any intraday initial margin calls to clearing members. While proposed § 39.19(c)(1), discussed above, would provide the Commission with initial margin and daily variation margin data, the Commission would not receive that data until the following business day. Learning of an intraday initial margin call soon after the call would assist the Commission in

determining whether certain clearing member positions could affect the ability of a DCO to meet its end-of-day financial obligations in a timely manner. This data would alert the Commission to positions that could pose greater risk. This is especially important given that intraday initial margin calls are unusual and are often due to increasing position size. The Commission invites commenters to recommend other possible reporting solutions that could serve to inform the Commission of a clearing member that is potentially building up position size during the current trading day.

The report would have to be submitted no later than 1 hour following the margin call and would have to separately list each request and include the name of the clearing member, the amount requested and the account origin.

The Commission notes that while this may impose an occasional reporting requirement on DCOs, many DCOs already have such reports generated for submission to a clearing member's depository as a request for intraday funds. The primary burden would be arranging a mechanism that would allow submission of these reports to the Commission in a timely manner. Thus, the Commission believes that it would be a de minimis burden.

(f) Delay in Collection of Initial Margin

Proposed § 39.19(c)(4)(vi) would require the DCO to immediately notify the Commission when it has not received additional initial margin that it requested from a clearing member, in a timely manner. The proposed reporting requirement is intended to alert the Commission of a development that could be an indicator of a potential clearing member default. Payment of additional initial margin would be considered late if the DCO has not received payment within the time frame allowed by the DCO's rules and procedures.<sup>31</sup> The Commission invites comment on this reporting requirement and the time frame used in determining when a payment is not considered timely.

(g) Management of Clearing Member Positions

Proposed §§ 39.19(c)(4)(vii)–(ix) would require a DCO to apprise the Commission of different levels of

financial distress of a clearing member, and the status of the DCO's actions to manage the risks associated with the clearing member's financial situation. The DCO would be required to report situations where a clearing member's position(s) must be reduced, transferred or liquidated, or where the clearing member defaults.

Proposed § 39.19(c)(4)(vii) would require a DCO to immediately notify the Commission of the DCO's request to a clearing member to reduce its positions because the DCO has determined that the clearing member has exceeded its exposure limit, that the clearing member has failed to meet an initial or variation margin call, or that it has failed to fulfill any other financial obligation to the DCO. The notice would have to include: (A) The name of the clearing member; (B) the time the clearing member was contacted; (C) the number of positions by which the DCO requested the clearing member to reduce its position size; (D) the contracts that are the subject of the request; and (E) the reason for the request.

Proposed § 39.19(c)(4)(viii) would require a DCO to immediately notify the Commission of the DCO's determination that any position the DCO carries for one of its clearing members must be liquidated immediately or transferred immediately, or that the trading of any account of a clearing member can be only for the purposes of liquidation because that clearing member has failed to meet an initial or variation margin call or failed to fulfill any other financial obligation to the DCO. The notice would have to include: (A) The name of the clearing member; (B) the time the clearing member was contacted; (C) the contracts that are subject to the determination; (D) the number of positions that are subject to the determination; and (E) the reason for the determination.

The provisions of proposed § 39.19(c)(4)(viii) are substantially similar to the requirements of § 1.12(f)(1) of the Commission's regulations. Accordingly, the Commission is proposing to remove § 1.12(f)(1) and redesignate it as proposed § 39.19(c)(4)(viii) in substantially the same form. The difference would be that while § 1.12(f)(1) applies only to a DCO's determination concerning a clearing member that is a registered futures commission merchant (FCM) or registered leverage transaction merchant, proposed § 39.19(c)(4)(viii) would apply to all DCO clearing members, even those that are not registrants.

<sup>31</sup> The DCO's rules and procedures are required to be submitted to the Commission under Section 5c(c) of the CEA, 7 U.S.C. 7a–2(c), and § 40.6. Such information is required to be made available to clearing members and the public under Core Principle L and proposed § 39.21. See *infra* Section II.C. of this notice.

<sup>30</sup> See 75 FR at 63116.

Proposed § 39.19(c)(4)(ix) would require a DCO to immediately notify the Commission of the default of a clearing member. An event of default would be determined in accordance with the rules of the DCO. The notice of default would have to include: (A) The name of the clearing member; (B) the contracts the clearing member defaulted upon; (C) the number of positions the clearing member defaulted upon; and (D) the amount of the unmet financial obligation.

(h) Change in Ownership or Corporate or Organizational Structure

Proposed § 39.19(c)(4)(x) is intended to provide advance notice to the Commission of major ownership, corporate, or organizational changes of a DCO. The DCO would be required to report any anticipated ownership, corporate, or organizational changes of the DCO or its parent company that would: (i) Result in at least a 10 percent change of ownership of the DCO; (ii) create a new subsidiary of the DCO or the parent company; (iii) eliminate a current subsidiary of the DCO or its parent company; or (iv) result in a transfer of all or substantially all of its assets, including its registration as a DCO, to another legal entity (e.g., as a result of a reincorporation, or corporate merger). Such changes could include, but would not be limited to, the DCO's change of corporate structure from a partnership to a corporation, or from a member owned company to a publicly held company, or a change in corporate domicile. The report would include: (1) A chart outlining the new ownership or corporate or organizational structure, (2) a brief description of the purpose and impact of the change; and (3) any relevant agreements effecting the change and corporate documents such as new articles of incorporation and bylaws. With respect to a corporate change that results in a transfer of all or substantially all of a DCO's assets, the informational requirements of proposed § 39.19(c)(4)(x)(B) would be satisfied by the DCO's compliance with proposed § 39.3(h)(3).<sup>32</sup>

Because a DCO is likely to be aware of such changes well in advance of their effective date, the proposed regulation would require the report to be submitted to the Commission no later than three months prior to the anticipated change. The Commission is allowing an exception to the three-month prior notice requirement if the DCO does not

know and reasonably could not have known of the anticipated change three months prior to that change. In such event, the DCO would be required to immediately report such change to the Commission as soon as it knows of the change. The Commission requests comment on whether the three-month notice period is appropriate or whether a different notice period should be required.

Proposed § 39.19(c)(4)(x)(D) would require a second report to the Commission of the consummation of the corporate or organizational change no later than 2 business days following the effective date of the change.

The Commission notes that there may be differences in the proposed notification requirements for changes in the ownership or corporate or organizational structure of DCOs, designated contract markets, swap execution facilities, and swap data repositories.<sup>33</sup> The Commission requests comment on the proposed reporting requirements under § 39.19(c)(4)(x), generally, and, more specifically, the extent to which there should be uniformity or differentiation in notification procedures applied to different types of registrants.

(i) Change in Key Personnel

Proposed § 39.19(c)(4)(xi) would require a DCO to report to the Commission the departure or addition of persons who are key personnel, as defined in proposed § 39.1(b), no later than two business days following any such change. As applicable when a position is vacated, the report would include the name of the person who will assume the duties of the position on a temporary basis until a permanent replacement fills the position.

Key personnel would be defined by proposed § 39.1(b) as personnel who play a significant role in the operation of the DCO, provision of clearing and settlement services, risk management, or oversight of compliance with the CEA and Commission regulations. Key personnel would include, but would not be limited to, those persons who are or perform the functions of any of the following: The chief executive officer; president; chief compliance officer; chief operating officer; chief risk officer; chief financial officer; chief technology officer; and emergency contacts or persons who are responsible for business continuity and disaster recovery.<sup>34</sup> The term "emergency"

would have the same meaning as defined in § 40.1(g), which the Commission has proposed to revise and redesignate as § 40.1(h).<sup>35</sup> The Commission intends to require listing key personnel on a DCO's initial application in furtherance of the applicant's representation that it can satisfy the requirements of Core Principle B, *i.e.*, that it will have adequate managerial resources.<sup>36</sup> From a practical standpoint, notification of any changes of key personnel, particularly those responsible for handling emergency situations, is important for purposes of the Commission's general oversight of each DCO, as well as its ability to establish contact with key personnel in a timely manner, as circumstances may warrant.

(j) Credit Facility Funding Arrangement Change

Under proposed § 39.19(c)(4)(xii), a DCO would be required to notify the Commission of material changes in a credit facility funding arrangement, if the DCO has one in place. A credit facility funding arrangement is generally used as a stop-gap measure in an emergency situation such as to provide liquidity during a clearing member default or to temporarily provide the DCO with adequate operating funds.<sup>37</sup>

<sup>35</sup> See 75 FR 67282, 67292 (Nov. 2, 2010) (provisions common to registered entities; proposing to revise and redesignate § 40.1(g) as § 40.1(h)). The term "emergency" is currently defined as:

Any occurrence or circumstance that, in the opinion of the governing board of a registered entity, or a person or persons duly authorized to issue such an opinion on behalf of the governing board of a registered entity under circumstances and pursuant to procedures that are specified by rule, requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any agreements, contracts or transactions, including: (1) Any manipulative or attempted manipulative activity; (2) Any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions; (3) Any circumstances which may materially affect the performance of agreements, contracts or transactions, including failure of the payment system or the bankruptcy or insolvency of any participant; (4) Any action taken by any governmental body, or any other registered entity, board of trade, market or facility which may have a direct impact on trading; and (5) Any other circumstance which may have a severe, adverse effect upon the functioning of a registered entity. 17 CFR 40.1(g).

<sup>36</sup> See Section 5b(c)(2)(B)(i) of the CEA; 17 USC 7a-1(c)(2)(B)(i) (requiring each DCO to have "adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization"). The Commission expects to include in a future rulemaking revised instructions for DCO applications which will include a requirement that applicants list key personnel and emergency contacts.

<sup>37</sup> See 75 FR at 63116 (proposing that a DCO may use a committed line of credit or similar facility to

<sup>32</sup> In a separate proposed rulemaking, the Commission is proposing procedures for the transfer of a DCO's registration and open interest under proposed § 39.3(h).

<sup>33</sup> Such requirements would be proposed in separate rulemakings, each for a specific registrant.

<sup>34</sup> In a separate rulemaking, the Commission is proposing to adopt this definition for "key personnel" in a new § 39.1(b).

Thus, it is essential for the Commission to be promptly notified of changes that would affect the DCO's immediate access to cash. Under the proposed regulation, a DCO would have to notify the Commission no later than one business day after a DCO changes a credit facility funding arrangement, is notified that such an arrangement has changed, or knows or reasonably should know that the arrangement will change, including but not limited to a change in lender, change in the size of the facility, change in expiration date, or any other material changes or conditions.

#### (k) Rule Enforcement

As mandated by Core Principle H, proposed § 39.19(c)(4)(xiii) would require a DCO to report to the Commission regarding rule enforcement activities and sanctions imposed against clearing members. More specifically, it would require a DCO to notify the Commission no later than two business days after the DCO (A) initiates a rule enforcement action against a clearing member, or (B) imposes sanctions against a clearing member. The Commission notes that while an exchange has 30 days within which to notify the Commission of a decision pursuant to which a disciplinary action has become final,<sup>38</sup> a DCO taking disciplinary action against a clearing member is a less common occurrence, and the clearing member's offense could potentially impact the financial integrity of the DCO. Thus, the Commission believes that it should be notified of such actions, sooner. Nonetheless, the Commission requests comment on whether a 30-day reporting period would be more appropriate under proposed § 39.19(c)(4)(xiii).

#### (l) Financial Condition and Events

Proposed § 39.19(c)(4)(xiv) is intended to alert the Commission of certain events and situations that may affect the financial integrity of a DCO. Under the proposed regulation, a DCO would be required to immediately notify the Commission after the DCO knows or reasonably should know of: (A) The institution of any legal proceedings which may have a material adverse financial impact on the DCO; (B) any event, circumstance or situation that would not otherwise be required to be reported under § 39.19 and that would materially impede the DCO's ability to comply with part 39 of the Commission's regulations; and (C) any material adverse change in the financial

condition of any clearing member that would not otherwise be required to be reported under § 39.19. These requirements would place an affirmative duty on the DCO to be aware of and monitor such events, and would permit the DCO to exercise its discretion in determining which events rise to the level of requiring notification to the Commission.

Proposed § 39.19(c)(4)(xv) would require a DCO, when it discovers or is notified by an independent public accountant of the existence of any material inadequacy, to give notice of such material inadequacy within 24 hours, and within 48 hours after giving such notice to file a written report stating what steps have been and are being taken to correct the material inadequacy. Proposed § 39.19(c)(4)(xv) is consistent with § 1.12(d), a similar requirement for FCMs and introducing brokers.

#### 5. Technical Amendments

Sections 39.5(a) and (b) require certain reports from a DCO upon request by the Commission. The Commission is proposing redesignating § 39.5(a) and (b) as proposed § 39.19(c)(5)(i) and (ii), respectively, in substantially the same form. The Commission believes that the addition of proposed § 39.19 as the DCO reporting regulation would make that section the appropriate placement for the provisions of § 39.5(a) and (b). Section 39.5(a), which is proposed as new § 39.19(c)(5)(i), requires that, upon request by the Commission, a DCO file with the Commission such information related to its business as a clearing organization, including information relating to trade and clearing details, in the form and manner and within the time as specified by the Commission in the request. Section 39.5(b), which is proposed as new § 39.19(c)(5)(ii), requires that, upon request by the Commission, a DCO file with the Commission a written demonstration, containing such supporting data, information and documents, in the form and manner and within such time as the Commission may specify, that the DCO is in compliance with one or more core principles and the relevant provisions of part 39, as specified in the request.

Section 39.5(c) currently requires a DCO to submit large trader reports in circumstances where they are not required to be filed by FCMs, clearing members or others.<sup>39</sup> The Commission

<sup>39</sup> Section 39.5(c) states:

Information regarding transactions by large traders cleared by a derivatives clearing organization shall be filed with the Commission, in a form and manner acceptable to the Commission, by futures commission merchants, clearing

is proposing to remove § 39.5(c) because the data from such large trader reports would be available pursuant to a combination of other large trader reporting requirements and the requirements of proposed § 39.19(c)(1).<sup>40</sup>

Section 39.5(d) currently requires, upon special call, reports by certain persons for positions cleared on a DCO.<sup>41</sup> The Commission is proposing to redesignate § 39.5(d) as § 21.04 because part 21 (Special Calls) is the appropriate placement for this provision.<sup>42</sup> As such, the Commission also proposes to redesignate current § 21.04 as § 21.05 and add § 21.06 which would delegate its authority under proposed § 21.04 to the Director of the Division of Clearing and Intermediary Oversight.<sup>43</sup>

#### B. Recordkeeping Requirements

To implement Core Principle K, the Commission proposes to codify the requirements of the core principle such that each DCO will have to maintain records of all activities related to its business as a DCO in the form and manner acceptable to the Commission for a period of not less than five years. To clarify this general standard by way of example, and to supplement pre-existing recordkeeping requirements

members, foreign brokers or registered entities other than a derivatives clearing organization, as applicable. Provided, however, that if no such person or entity is required to file large trader information with the Commission, such information must be filed with the Commission by a derivatives clearing organization.

17 CFR 39.5(c).

<sup>40</sup> See *supra* discussion of proposed daily reporting requirements at Section II.A.1. of this notice.

<sup>41</sup> Section 39.5(d) states:

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

17 CFR 39.5(d).

<sup>42</sup> In a recent proposed rulemaking, the Commission proposed to renumber § 39.5 as § 39.6. See 75 FR 67277, 67281 (Nov. 2, 2010) (process for review of swaps for mandatory clearing). Renumbering would no longer be necessary if the requirements of § 39.5 are redesignated as proposed in this notice. (As discussed in this section, the Commission is proposing to: (1) Redesignate § 39.5(a) as § 39.19(c)(5)(i); (2) redesignate § 39.5(b) as § 39.19(c)(5)(ii); (3) remove § 39.5(c); (4) redesignate § 21.04 as § 21.05; (5) redesignate § 39.5(d) as § 21.04; and (6) add § 21.06). Additionally, the earlier proposal to redesignate §§ 39.6 and 39.7 as §§ 39.7 and 39.8, respectively, would no longer be necessary. See 75 FR at 67281. The Commission notes that it intends to propose a revised and renumbered part 39 in conjunction with an upcoming notice of proposed rulemaking.

<sup>43</sup> This delegation provision is the same as the delegation provision for the Director of the Division of Market Oversight in current § 21.04.

meet the liquidity requirements set forth in proposed § 39.11(e)(1) and 39.11(e)(2).

<sup>38</sup> See 17 CFR 9.11(a).



imposed by various Commission regulations,<sup>44</sup> the Commission is proposing to list examples of information subject to the recordkeeping requirement.

Proposed § 39.20(a)(1) would require a DCO to maintain records of all cleared transactions, including swaps. This is information that a DCO already maintains in the ordinary course of its business as a clearing house.

More specifically, proposed § 39.20(a)(2) would require a DCO to retain all information necessary to record allocation of bunched orders for cleared swaps. This provision would highlight an important recordkeeping component of swaps clearing.

Proposed § 39.20(a)(3) would require a DCO to maintain records of all information required to be generated, created, or reported under part 39. This would include, but would not be limited to, the results of and the methodology used for all tests, reviews, and calculations in connection with setting and evaluating margin levels, determining the value and adequacy of financial resources, and establishing settlement prices.

Proposed § 39.20(a)(4) would require a DCO to maintain records of all rules and procedures of the DCO. Specifically, the DCO would be required to maintain records of all rules and procedures required to be submitted pursuant to part 39 and part 40 of the Commission's regulations, including all proposed changes in rules, procedures or operations of SIDCOs, subject to proposed § 40.10.<sup>45</sup>

Proposed § 39.20(a)(5) would require a DCO to maintain any data or documentation required by the Commission or the DCO to be submitted to the DCO by its clearing members, or by any other person in connection with the DCO's clearing and settlement activities.

Proposed § 39.20(b)(1) would require a DCO to maintain records required by the Commission's regulations in accordance with the provisions of § 1.31 (books and records; keeping and inspection), for a period of not less than five years. However, there is an exception in proposed § 39.20(b)(2) that would require each DCO that clears swaps to maintain swap data in accordance with the requirements of part 45 (swap data repositories) of the Commission's regulations.

<sup>44</sup> For example, §§ 1.26 and 1.27 impose recordkeeping requirements for DCOs and FCMs related to the investment of customer funds.

<sup>45</sup> See 75 FR 67282 (Nov. 2, 2010) (proposing amendments to part 40 of the Commission's regulations).

### C. Public Information

To implement Core Principle L, the Commission proposes to codify the requirements of the core principle, requiring DCOs to provide or make available certain information to the public and to market participants.

#### 1. Availability of Information

Proposed § 39.21(a) would require each DCO to provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the DCO.<sup>46</sup> In furtherance of this objective, each DCO would be required to have clear and comprehensive rules and procedures. Proposed § 39.21(b) would require each DCO to make information concerning the rules and the operating and default procedures governing the clearing and settlement systems of the DCO available to market participants.<sup>47</sup>

#### 2. Public Disclosure

Proposed § 39.21(c) would require each DCO to disclose publicly and to the Commission information concerning: (1) The terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO; (2) each clearing and other fee that the DCO charges its clearing members; (3) the DCO's margin methodology; (4) the size and composition of the financial resource package available in the event of a clearing member default; (5) daily settlement prices, volume, and open interest for each contract, agreement or transaction cleared or settled by the DCO; (6) the DCO's rules and procedures for defaults pursuant to proposed § 39.16;<sup>48</sup> and (7) any other matter that is relevant to participation in the clearing and settlement activities of the DCO.<sup>49</sup>

Under proposed § 39.21(d) the DCO would be required to make its rulebook, a list of all current clearing members, and the information listed in proposed § 39.21(c) readily available to the general public, in a timely manner, by posting such information on the DCO's website, unless otherwise permitted by the Commission. The information that

<sup>46</sup> See Section 5b(c)(2)(L)(i) of the CEA, 7 U.S.C. 7a-1(c)(2)(L)(i).

<sup>47</sup> See Section 5b(c)(2)(L)(ii) of the CEA, 7 U.S.C. 7a-1(c)(2)(L)(ii).

<sup>48</sup> In a future proposed rulemaking, the Commission intends to propose a new § 39.16 to implement DCO Core Principle G, regarding default rules and procedures. See Section 5b(c)(2)(G) of the CEA, 7 U.S.C. 7a-1(c)(2)(G).

<sup>49</sup> See Section 5b(c)(2)(L)(iii) of the CEA, 7 U.S.C. 7a-1(c)(2)(L)(iii).

would be required by proposed § 39.21(c)(5) would have to be made available to the public no later than the business day following the day to which the information pertains.

### D. Information Sharing

Proposed § 39.22 would require each DCO to enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement and to use relevant information obtained from each such agreement in carrying out the risk management program of the DCO. Proposed § 39.22 would codify the statutory provisions of Core Principle M. The Commission believes that the language affords each DCO the appropriate level of discretion regarding the appropriate information-sharing agreements to enter into and the rules to abide by, and it does not perceive a need to articulate more specific requirements. The Commission requests comment on this approach.

## III. Effective Date

The Commission is proposing that the requirements proposed in this notice become effective 180 days from the date the final rules are published in the **Federal Register**. The Commission believes that this would give DCOs adequate time to implement the technology and the procedures necessary to fulfill the proposed reporting requirements. This period of time also would be sufficient to allow for compliance with the recordkeeping, public information and information sharing requirements. The Commission requests comment on whether 180 days is an appropriate time frame for compliance with the proposed rules. The Commission further requests comment on possible alternative effective dates and the basis for any such alternative date.

## IV. Related Matters

### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.<sup>50</sup> The rules proposed by the Commission will affect only DCOs (some of which will be designated as SIDCOs). The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on small

<sup>50</sup> 5 U.S.C. 601 *et seq.*



entities in accordance with the RFA.<sup>51</sup> The Commission has previously determined that DCOs are not small entities for the purpose of the RFA.<sup>52</sup> Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

### B. Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. OMB has not yet assigned a control number to the new collection. The Paperwork Reduction Act of 1995 (PRA)<sup>53</sup> imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. This proposed rulemaking would result in new collection of information requirements within the meaning of the PRA. The Commission therefore is submitting this proposal to the Office of Management and Budget (OMB) for review. If adopted, responses to this collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR Part 145, "Commission Records and Information." In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

#### 1. Information Provided by Reporting Entities/Persons

The proposed regulations require each respondent to file information with the Commission (1) periodically, on a daily, quarterly, and annual basis,<sup>54</sup> (2) as specified events occur, and (3) upon Commission request.<sup>55</sup>

For daily reports, these would result in an estimated total of 12 initial responses and 250 responses per respondent on an annual basis. Commission staff estimates that respondents could expend up to \$690 initially and \$1,400 annually, based on an hourly rate ranging from \$46 to \$56, to comply with the proposed regulations. This would result in an aggregated cost of \$8,280 initially (12 respondents × \$690) and \$16,800 per annum (12 respondents × \$1,400).

For annual reports, these would result in an estimated total of 1 response per respondent on an annual basis. Commission staff estimates that respondents could expend up to \$482,110 annually, based on an hourly rate of \$185, to comply with the proposed regulations. This would result in an aggregated cost of \$5,785,320 per annum (12 respondents × \$482,110).<sup>56</sup>

For event-specific reports, these would result in an estimated total of 4 responses per respondent on an annual basis. Commission staff estimates that respondents could expend up to \$1,680 annually, based on an hourly rate of \$75, to comply with the proposed regulations. This would result in an aggregated cost of \$20,160 per annum (12 respondents × \$1,680).<sup>57</sup>

For recordkeeping requirements, these would result in an estimated total of 1 response per respondent on an annual basis. Commission staff estimates that respondents could expend up to \$1,000 annually, based on an hourly rate of \$10, to comply with the proposed regulations. This would result in an aggregated cost of \$12,000 per annum (12 respondents × \$1,000).

#### 2. Information Collection Comments

The Commission invites the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395-6566 or by e-mail at [OIRAsubmissions@omb.eop.gov](mailto:OIRAsubmissions@omb.eop.gov). Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the Addresses section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting [RegInfo.gov](http://RegInfo.gov). OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

#### C. Cost-Benefit Analysis

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the CEA. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a rule or to determine whether the benefits of the rulemaking outweigh its costs; rather, it requires that the Commission to "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to

<sup>51</sup> 47 FR 18618 (Apr. 30, 1982).

<sup>52</sup> See 66 FR 45604, 45609 (Aug. 29, 2001).

<sup>53</sup> 44 U.S.C. 3501 *et seq.*

<sup>54</sup> Quarterly financial resources reports and annual compliance reports are the subjects of separate Paperwork Reduction Act submissions in connection with other proposed rulemakings.

<sup>55</sup> Reports submitted upon Commission request are current requirements.

<sup>56</sup> This amount reflects the estimated cost of preparing audited annual financial statements, an activity which many, if not all, respondents already perform on an annual basis.

<sup>57</sup> This amount reflects the estimated cost of putting systems in place which would alert a respondent of certain event-specific-reporting requirements. It is expected, however, that most respondents already have most, if not all, of these systems in place. Additionally, this amount takes into account the preparation of reports such as the pro forma financial statement for a decrease in ownership equity, a document which a respondent would most likely already have produced in connection with whatever specific event the respondent anticipated would cause a decrease in ownership equity.

accomplish any of the purposes of the CEA.

*Summary of proposed requirements.* The proposed regulations would implement the reporting, recordkeeping, public information, and information-sharing requirements for DCOs under the CEA, as amended by the Dodd-Frank Act.

*Costs.* With respect to costs, the Commission has determined that the costs of the new reporting requirements are not expected to be significant given that the information required to be reported is readily available to the DCO and, in certain instances, is already being reported to the Commission. The incremental increases in operating costs will have a negligible effect on the markets' efficiency, effectiveness and financial competitiveness.

*Benefits.* With respect to benefits, the Commission has determined that receiving such data required by the daily, annual and event-specific reporting requirements in a timely manner and in one format would further the Commission's goal of monitoring the financial health and financial integrity of DCOs and whether a DCO's financial and risk management practices are effective. It would also assist the Commission in taking prompt action as necessary to identify insipient problems and address them at an earlier stage. This would further the goal of avoiding systemic risk due to the default of a clearing member and thereby protect market participants and the public and serve the public interest by promoting sound risk management practices. Similarly, the recordkeeping requirements allow for making certain records available for Commission inspection, which helps further the goals of the reporting requirements and is necessary for the Commission to effectively monitor a DCO's financial integrity and compliance with the CEA and Commission regulations. The public information requirements serve the public interest by facilitating the dissemination of important information about the DCO, including its clearing and settlement activities and default procedures. Information-sharing requirements promote cooperation among industry participants, facilitating more effective risk management.

*Public Comment.* The Commission invites public comment on its cost-benefit considerations. Commentators are also invited to submit any data or other information that they may have quantifying or qualifying costs and benefits of the Proposal with their comment letters.

## List of Subjects

### 17 CFR Part 1

Brokers, Commodity futures, Consumer protection.

### 17 CFR Part 21

Brokers, Commodity futures, Reporting and recordkeeping requirements

### 17 CFR Part 39

Definitions, commodity futures, reporting and recordkeeping requirements, swaps.

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR parts 1, 21 and 39 as follows:

## PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

### Authority and Issuance

1. The authority citation for part 1 is revised to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

2. In § 1.12, remove and reserve paragraph (f)(1).

## PART 21—SPECIAL CALLS

### Authority and Issuance

3. The authority for part 21 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 2a, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 12a, 19 and 21, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010); 5 U.S.C. 552 and 552(b), unless otherwise noted.

4. Redesignate § 21.04 as § 21.05.

5. Add § 21.06 to read as follows:

### **§ 21.06 Delegation of authority to the Director of the Division of Clearing and Intermediary Oversight.**

The Commission hereby delegates, until the Commission orders otherwise, the special call authority set forth in § 21.04 to the Director of the Division of Clearing and Intermediary Oversight to be exercised by such Director or by such other employee or employees of such Director as designated from time to time by the Director. The Director of the Division of Clearing and Intermediary Oversight may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the

authority delegated in this section to the Director.

## PART 39—DERIVATIVES CLEARING ORGANIZATIONS

### Authority and Issuance

6. The authority for part 39 is proposed to read as follows:

**Authority:** 7 U.S.C. 2, 5, 6, 6d, 7a-1, 7a-2, and 7b as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

7. Add § 39.19 to read as follows:

### **§ 39.19 Reporting.**

(a) *In general.* Each derivatives clearing organization shall provide to the Commission the information specified in this section and any other information that the Commission deems necessary to conduct its oversight of a derivatives clearing organization.

(b) *Submission of reports.* (1) Unless otherwise specified by the Commission or its designee, each derivatives clearing organization shall submit the information required by this section to the Commission electronically and in a form and manner prescribed by the Commission.

(2) *Time zones.* Unless otherwise specified by the Commission or its designee, any stated time in this section is Central time for information concerning derivatives clearing organizations located in that time zone, and Eastern time for information concerning all other derivatives clearing organizations.

(c) *Reporting requirements.* Each registered derivatives clearing organization shall provide to the Commission or other person as may be required or permitted by this paragraph the information specified below:

(1) *Daily reporting.* A report containing the information specified by this paragraph (c)(1), which shall be compiled as of the end of each trading day and shall be submitted to the Commission by 10 a.m. on the following business day:

(i) Initial margin requirements and initial margin on deposit for each clearing member, by customer origin and house origin;

(ii) Daily variation margin, separately listing the mark-to-market amount collected from or paid to each clearing member, by customer origin and house origin;

(iii) All other daily cash flows relating to clearing and settlement including, but not limited to, option premiums and payments related to swaps such as coupon amounts, collected from or paid to each clearing member, by customer origin and house origin; and

(iv) End-of-day positions for each clearing member, by customer origin and house origin.

(2) *Quarterly reporting.* A report of the derivatives clearing organization's financial resources as required by § 39.11(f); *provided that*, additional reports may be required by paragraph (c)(4)(i) of this section or § 39.11(f).

(3) *Annual reporting.* (i) *Annual report of chief compliance officer.* The annual report of the chief compliance officer required by § 39.10.

(ii) *Audited financial statements.* Audited year-end financial statements of the derivatives clearing organization or, if there are no financial statements available for the derivatives clearing organization itself, the consolidated audited year-end financial statements of the derivatives clearing organization's parent company.

(iii) *Time of report.* The reports required by this paragraph (c)(3) shall be submitted concurrently to the Commission not more than 90 days after the end of the derivatives clearing organization's fiscal year; *provided that*, a derivatives clearing organization may request from the Commission an extension of time to submit either report, provided the derivatives clearing organization's failure to submit the report in a timely manner could not be avoided without unreasonable effort or expense. Extensions of the deadline will be granted at the discretion of the Commission.

(4) *Event-specific reporting.* (i) *Decrease in financial resources.* If there is a decrease of 10 percent in the total value of the financial resources required to be maintained by the derivatives clearing organization under § 39.11(a) or, as applicable, § 39.29(a), either from the last quarterly report submitted under § 39.11(f) or from the value as of the close of the previous business day, the derivatives clearing organization shall report such decrease to the Commission no later than one business day following the day the 10 percent threshold was reached. The report shall include:

(A) The total value of the financial resources:

(1) as of the close of business the day the 10 percent threshold was reached, and

(2) if reporting a decrease in value from the previous business day, the total value of the financial resources immediately prior to the 10 percent decline;

(B) A breakdown of the value of each financial resource reported in each of paragraph (4)(i)(A)(1) and (2), calculated in accordance with the requirements of § 39.11(d) or, as applicable, § 39.29(b),

including the value of each individual clearing member's guaranty fund deposit if the derivatives clearing organization reports guaranty fund deposits as a financial resource; and

(C) A detailed explanation for the decrease.

(ii) *Decrease in ownership equity.* No later than two business days prior to an event which the derivatives clearing organization knows or should reasonably know will cause a decrease of 20 percent or more in ownership equity from the last reported ownership equity balance as reported on a quarterly or audited financial statements required to be submitted by paragraph (c)(2) or (c)(3)(ii), respectively, of this section, but in any event no later than two business days after such decrease in ownership equity for events that caused the decrease for which the derivatives clearing organization does not know and reasonably should not have known about prior to the event. The report shall include:

(A) Pro forma financial statements reflecting the DCO's estimated future financial condition following the anticipated decrease for reports submitted prior to the anticipated decrease and current financial statements for reports submitted after such a decrease; and

(B) Details describing the reason for the decrease or anticipated decrease in the balance.

(iii) *Six-month liquid asset requirement.* Immediate notice when a derivatives clearing organization knows or reasonably should know of a deficit in the six-month liquid asset requirement of § 39.11(e)(2).

(iv) *Change in working capital.* No later than two business days after working capital becomes negative; the notice shall include a balance sheet that reflects the derivatives clearing organization's working capital and an explanation as to the reason for the negative balance.

(v) *Intraday initial margin calls.* (A) *Reporting requirement.* Any intraday initial margin call to a clearing member.

(B) *Required information.* The report shall separately list each request and include the name of the clearing member, the amount requested and the account origin.

(C) *Time of report.* The report shall be submitted to the Commission no later than 1 hour following the margin call.

(vi) *Delay in collection of initial margin.* Immediate notice when a derivatives clearing organization has not received additional initial margin that it requested from a clearing member within the time frame allowed by the

derivatives clearing organization's rules and procedures.

(vii) *Request to clearing member to reduce its positions.* Immediate notice, of a derivatives clearing organization's request to a clearing member to reduce its positions because the derivatives clearing organization has determined that the clearing member has exceeded its exposure limit, has failed to meet an initial or variation margin call, or has failed to fulfill any other financial obligation to the derivatives clearing organization. The notice shall include:

(A) The name of the clearing member;

(B) The time the clearing member was contacted;

(C) The number of positions by which the derivatives clearing organization requested the clearing member to reduce its position size;

(D) All contracts that are the subject of the request; and

(E) The reason for the request.

(viii) *Determination to transfer or liquidate positions.* Immediate notice, of a determination that any position a derivatives clearing organization carries for one of its clearing members must be liquidated immediately or transferred immediately, or that the trading of any account of a clearing member shall be only for the purposes of liquidation because that clearing member has failed to meet an initial or variation margin call or has failed to fulfill any other financial obligation to the derivatives clearing organization. The notice shall include:

(A) The name of the clearing member;

(B) The time the clearing member was contacted;

(C) The contracts that are subject to the determination;

(D) The number of positions that are subject to the determination; and

(E) The reason for the determination.

(ix) *Default of a clearing member.* Immediate notice, upon the default of a clearing member. An event of default shall be determined in accordance with the rules of the derivatives clearing organization. The notice of default shall include:

(A) The name of the clearing member;

(B) The contracts the clearing member defaulted upon;

(C) The number of positions the clearing member defaulted upon; and

(D) The amount of the financial obligation.

(x) *Change in ownership or corporate or organizational structure.* (A) *Reporting requirement.* Any anticipated change in the ownership or corporate or organizational structure of the derivatives clearing organization or its parent company that would:

(1) Result in at least a 10 percent change of ownership of the derivatives clearing organization,

(2) create a new subsidiary or eliminate a current subsidiary of the derivatives clearing organization or its parent company, or

(3) result in the transfer of all or substantially all of its assets, including its registration as a derivatives clearing organization to another legal entity.

(B) *Required information.* The report shall include: A chart outlining the new ownership or corporate or organizational structure; a brief description of the purpose and impact of the change; and any relevant agreements effecting the change and corporate documents such as articles of incorporation and bylaws. With respect to a corporate change for which a derivatives clearing organization submits a request for approval to transfer its derivatives clearing organization registration and open interest under § 39.3(h) of this part, the informational requirements of this paragraph (c)(4)(x)(B) shall be satisfied by the derivatives clearing organization's compliance with § 39.3(h)(3).

(C) *Time of report.* The report shall be submitted to the Commission no later than three months prior to the anticipated change; *provided that* the derivatives clearing organization may report the anticipated change to the Commission later than three months prior to the anticipated change if the derivatives clearing organization does not know and reasonably could not have known of the anticipated change three months prior to the anticipated change. In such event, the derivatives clearing organization shall immediately report such change to the Commission as soon as it knows of such change.

(D) *Confirmation of change report.* The derivatives clearing organization shall report to the Commission the consummation of the change no later than 2 business days following the effective date of the change.

(xi) *Change in key personnel.* No later than two business days following the departure, or addition of persons who are key personnel as defined in § 39.1(b), a report that includes, as applicable, the name of the person who will assume the duties of the position on a temporary basis until a permanent replacement fills the position.

(xii) *Credit facility funding arrangement change.* No later than one business day after a derivatives clearing organization changes a credit facility funding arrangement it may have in place, is notified that such arrangement has changed, or knows or reasonably

should have known that the arrangement will change, including but not limited to a change in lender, change in the size of the facility, change in expiration date, or any other material changes or conditions.

(xiii) *Rule enforcement.* Notice of action taken, no later than two business days after the derivatives clearing organization:

(A) Initiates a rule enforcement action against a clearing member; or

(B) Imposes sanctions against a clearing member.

(xiv) *Financial condition and events.* Immediate notice after the derivatives clearing organization knows or reasonably should have known of:

(A) The institution of any legal proceedings which may have a material adverse financial impact on the derivatives clearing organization;

(B) Any event, circumstance or situation that materially impedes the derivatives clearing organization's ability to comply with this part and is not otherwise required to be reported under this section; or

(C) A material adverse change in the financial condition of any clearing member that is not otherwise required to be reported under this section.

(xv) *Financial statements material inadequacies.* If a derivatives clearing organization discovers or is notified by an independent public accountant of the existence of any material inadequacy, such derivatives clearing organization must give notice of such material inadequacy within 24 hours, and within 48 hours after giving such notice file a written report stating what steps have been and are being taken to correct the material inadequacy.

**§ 39.5(a) [Redesignated as § 39.19(c)(5)(i)]**

8. Redesignate § 39.5(a) as § 39.19(c)(5)(i).

9. Redesignate § 39.5(b) as § 39.19(c)(5)(ii) and revise to read as follows:

**§ 39.19 Reporting.**

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

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

**§ 39.5(d) [Redesignated as § 21.04]**

10. Redesignate § 39.5(d) as § 21.04.

**§ 39.5 [Amended]**

11. Remove § 39.5(c) and reserve the section.

12. Add § 39.20 to read as follows:

**§ 39.20 Recordkeeping.**

(a) *Requirement to maintain information.* Each derivatives clearing organization shall maintain records of all activities related to its business as a derivatives clearing organization. Such records shall include, but are not limited to, records of:

(1) All cleared transactions, including swaps.

(2) All information necessary to record allocation of bunched orders for cleared swaps;

(3) All information required to be created, generated, or reported under this part 39, including but not limited to the results of and methodology used for all tests, reviews, and calculations in connection with setting and evaluating margin levels, determining the value and adequacy of financial resources, and establishing settlement prices;

(4) All rules and procedures required to be submitted pursuant to this part 39 and part 40 of this chapter, including all proposed changes in rules, procedures or operations subject to § 40.10 of this chapter; and

(5) Any data or documentation required by the Commission or by the derivatives clearing organization to be submitted to the derivatives clearing organization by its clearing members, or by any other person in connection with the derivatives clearing organization's clearing and settlement activities.

(b) *Form and manner of maintaining information.* (1) In general. The records required to be maintained by this chapter shall be maintained in accordance with the provisions of § 1.31 of this chapter, for a period of not less than 5 years, except as provided in paragraph (b)(2) of this section.

(2) *Exception for swap data.* Each derivatives clearing organization that clears swaps must maintain swap data in accordance with the requirements of part 45 of this chapter.

15. Add § 39.21 to read as follows:

**§ 39.21 Public information.**

(a) *In general.* Each derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization. In furtherance of this objective, each

derivatives clearing organization shall have clear and comprehensive rules and procedures.

(b) *Availability of information.* Each derivatives clearing organization shall make information concerning the rules and the operating and default procedures governing the clearing and settlement systems of the derivatives clearing organization available to market participants.

(c) *Public disclosure.* Each derivatives clearing organization shall disclose publicly and to the Commission information concerning:

(1) The terms and conditions of each contract, agreement, and transaction cleared and settled by the derivatives clearing organization;

(2) Each clearing and other fee that the derivatives clearing organization charges its clearing members;

(3) The margin-setting methodology;

(4) The size and composition of the financial resource package available in the event of a clearing member default;

(5) Daily settlement prices, volume, and open interest for each contract, agreement, or transaction cleared or settled by the derivatives clearing organization;

(6) The derivatives clearing organization's rules and procedures for defaults in accordance with § 39.16 of this part; and

(7) Any other matter that is relevant to participation in the clearing and settlement activities of the derivatives clearing organization.

(d) *Publication of information.* The derivatives clearing organization shall make its rulebook, a list of all current clearing members and the information listed in paragraph (c) of this section readily available to the general public, in a timely manner, by posting such information on the derivatives clearing organization's website, unless otherwise permitted by the Commission. The information required in paragraph (c)(5) of this section shall be made available to the public no later than the business day following the day to which the information pertains.

16. Add § 39.22 to read as follows:

**§ 39.22 Information sharing.**

Each derivatives clearing organization shall enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement, and shall use relevant information obtained from each such agreement in carrying out the risk management program of the derivatives clearing organization.

Issued in Washington, DC, on December 1, 2010, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

**Appendices to Information Management Requirements for Derivatives Clearing Organizations—Commission Voting Summary and Statements of Commissioners**

**Note:** The following appendices will not appear in the Code of Federal Regulations

**Appendix 1—Commission Voting Summary**

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, Chilton and O'Malia voted in the affirmative. No Commissioner voted in the negative.

**Appendix 2—Statement of Chairman Gary Gensler**

I support the proposed rulemaking concerning information management, recordkeeping and reporting requirements for derivatives clearing organizations. The requirements would enable the Commission to conduct financial risk surveillance more efficiently and effectively. Further, they would promote transparency to the regulators, enhancing the Commission's ability to detect and resolve potential concerns before they escalate into major problems. The rule also fulfills Congress's direction that clearinghouses be required to make settlement prices and open interest public in all their contracts on a daily basis.

The proposed reporting rules apply uniform standards to all DCOs, thereby helping to avoid inconsistency in DCO reporting. The recordkeeping requirements are rooted in sound business practices, and the public information requirements serve the public interest by promoting transparency and disclosure. By codifying the information-sharing core principle into the Commission's regulations, the Commission would reaffirm its commitment to promoting cooperation among industry participants in carrying out risk management functions.

[FR Doc. 2010-31131 Filed 12-14-10; 8:45 am]

**BILLING CODE 6351-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2010-0850; FRL-9239-1]**

**Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; The Milwaukee-Racine and Sheboygan Areas; Determination of Attainment of the 1997 8-hour Ozone Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine under the Clean Air Act (CAA) that the Milwaukee-Racine and Sheboygan, Wisconsin areas have attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Milwaukee-Racine area includes Milwaukee, Ozaukee, Racine, Washington, Waukesha, and Kenosha Counties. The Sheboygan area includes Sheboygan County. The proposed determinations are based on complete, quality-assured and certified ambient air monitoring data that show that the areas have monitored attainment of the 1997 8-hour ozone standard for the 2006–2008 and 2007–2009 monitoring periods. Preliminary data available for 2010 indicate that the areas continue to monitor attainment. If EPA finalizes this action, as a result of these determinations, the requirements for these areas to submit attainment demonstrations and associated reasonably available control measures (RACM), reasonable further progress plans (RFP), contingency measures, and other State Implementation Plan (SIP) revisions related to attainment of the standard would be suspended for as long as the areas continue to attain the 1997 8-hour ozone standard. These determinations would also suspend the requirement for EPA to promulgate attainment demonstration, RFP, and any other attainment-related Federal Implementation Plans (FIPs) for these areas.

**DATES:** Comments must be received on or before January 14, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2010-0850, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail:* [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

3. *Fax:* (312) 692-2551.

4. *Mail:* John M. Mooney, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* John M. Mooney, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through