



## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 39

### RIN 3038-AE66

### Derivatives Clearing Organization General Provisions and Core Principles

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Correcting amendments.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is correcting final rules published in the *Federal Register* on January 27, 2020 (final rules). The final rules, which amended certain regulations applicable to derivatives clearing organizations (DCOs), took effect on February 26, 2020. This correction amends three provisions of the final rules that were inadvertently modified by operation of the amendatory instructions and rule text in the final rules.

**DATES:** Effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Eileen A. Donovan, Deputy Director, 202-418-5096, [edonovan@cftc.gov](mailto:edonovan@cftc.gov); Parisa Nouri, Associate Director, 202-418-6620, [pnouri@cftc.gov](mailto:pnouri@cftc.gov); Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:** On January 27, 2020, the Commission published final rules amending certain regulations applicable to DCOs to, among other things, address certain risk management and reporting obligations, clarify the meaning of certain provisions, simplify processes for registration and reporting, and codify existing

staff relief and guidance.<sup>1</sup> In renumbering § 39.11(b)(1)(vi) as § 39.11(b)(1)(v), the final rules inadvertently retained § 39.11(b)(1)(vi), such that paragraphs (b)(1)(v) and (vi) were duplicated as identical provisions.<sup>2</sup> The proposed rule text published on May 16, 2019 (proposed rules)<sup>3</sup> illustrates the intended renumbering of § 39.11(b)(1), and the Commission indicated in the preamble to the final rules its intention to renumber § 39.11(b)(1)(vi).<sup>4</sup> Therefore, the Commission is making a correcting amendment to § 39.11(b)(1) to resolve that error.

Further, in renumbering § 39.11(e)(3)(i) – (iii) as § 39.11(e)(4)(i) – (iii), the final rules inadvertently omitted paragraphs (e)(4)(ii) and (iii), which were contained in the proposed rules<sup>5</sup> and were not otherwise modified in the final rules.<sup>6</sup> Therefore, the Commission is making a correcting amendment to § 39.11(e)(4) to resolve that error.

Lastly, the final rules inadvertently omitted § 39.13(g)(8)(iii), which was not proposed to be modified.<sup>7</sup> The proposed rules include § 39.13(g)(8)(iii) unchanged from what was previously codified,<sup>8</sup> and the preamble to the final rules states that there was no intent to change paragraph (g)(8)(iii).<sup>9</sup> Thus, the omission of paragraph (g)(8)(iii) by

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<sup>1</sup> Derivatives Clearing Organization General Provisions and Core Principles, 85 FR 4800 (Jan. 27, 2020).

<sup>2</sup> The duplicate provisions state that the financial resources available to satisfy the requirements of § 39.11(a)(1) may include any other financial resource deemed acceptable by the Commission. Commission regulations referred to herein are found at 17 CFR chapter I.

<sup>3</sup> Derivatives Clearing Organization General Provisions and Core Principles, 84 FR 22226, 22268 (May 16, 2019).

<sup>4</sup> See 85 FR at 4807.

<sup>5</sup> See 84 FR at 22269 (illustrating the intended renumbering of § 39.11(e)(3)(i) – (iii) to (e)(4)(i) – (iii)).

<sup>6</sup> The inadvertently omitted paragraphs state that a DCO's cash balances shall be invested or placed in safekeeping in a manner that bears little or no principal risk, and letters of credit shall not be a permissible asset for a guaranty fund.

<sup>7</sup> The inadvertently omitted paragraph states that a DCO shall require its clearing members to ensure that their customers do not withdraw funds from their accounts with such clearing members unless the net liquidating value plus the margin deposits remaining in a customer's account after such withdrawal are sufficient to meet the customer initial margin requirements with respect to all products and swap portfolios held in such customer's account which are cleared by the DCO.

<sup>8</sup> See 84 FR at 22272.

<sup>9</sup> See 85 FR at 4828, n. 51.

operation of the amendatory instruction and rule text in the final rules was an inadvertent error.<sup>10</sup> Therefore, the Commission is making a correcting amendment to § 39.13(g)(8)(iii) to resolve that error.

## **List of Subjects**

### **17 CFR Part 39**

Application form, Business and industry, Commodity futures, Consumer protection, Default rules and procedures, Definitions, Enforcement authority, Participant and product eligibility, Reporting and recordkeeping requirements, Risk management, Settlement procedures, Swaps, Treatment of funds.

In consideration of the foregoing, 17 CFR part 39 is corrected by making the following correcting amendments:

#### **PART 39—DERIVATIVES CLEARING ORGANIZATIONS**

1. The authority citation for part 39 continues to read as follows:

Authority: 7 U.S.C. 2, 7a-1, and 12a; 12 U.S.C. 5464; 15 U.S.C. 8325.

2. Amend § 39.11 by removing paragraph (b)(1)(vi) and adding paragraphs (e)(4)(ii) and (iii) to read as follows:

#### **§ 39.11 Financial resources.**

\* \* \* \* \*

(e) \* \* \*

(4)(i) \* \* \*

(ii) Cash balances shall be invested or placed in safekeeping in a manner that bears little or no principal risk; and

(iii) Letters of credit shall not be a permissible asset for a guaranty fund.

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<sup>10</sup> See 85 FR at 4855, 4856.

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3. In § 39.13, add paragraph (g)(8)(iii) to read as follows:

**§ 39.13 Risk management.**

\* \* \* \* \*

(g) \* \* \*

(8) \* \* \*

(iii) *Withdrawal of customer initial margin.* A derivatives clearing organization shall require its clearing members to ensure that their customers do not withdraw funds from their accounts with such clearing members unless the net liquidating value plus the margin deposits remaining in a customer's account after such withdrawal are sufficient to meet the customer initial margin requirements with respect to all products and swap portfolios held in such customer's account which are cleared by the derivatives clearing organization.

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Issued in Washington, DC, on May 14, 2020 by the Commission.

Robert Sidman,

*Deputy Secretary of the Commission.*

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

**Appendix to Derivatives Clearing Organization General Provisions and Core Principles—Commission Voting Summary**

On this matter, Chairman Tarbert, and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in negative.

