



INTERNATIONAL MONETARY FUND

# UNITED STATES

## DETAILED ASSESSMENT OF IMPLEMENTATION

July 31, 2014

(revised 14 Oct 2014)

### SELF-ASSESSMENT BY THE STAFF OF THE U.S. COMMODITY FUTURES TRADING COMMISSION

### IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION

This self-assessment has been prepared by the Staff of the CFTC solely for purposes of the IMF's 2015 Financial Sector Assessment Program (FSAP) of the United States and should not be considered outside the FSAP context. The responses contained herein are not rules, regulations, or statements of the Commission. Further the CFTC has neither approved nor disapproved these responses. Accordingly, any statements or responses contained herein are not binding and should not be deemed to constitute interpretative advice by the Staff of the CFTC or be used or relied upon for legal purposes.

## CONTENTS

INTRODUCTION.....	3
ADDITIONAL GUIDANCE.....	4
SUMMARY GRADINGS.....	10
LIST OF ABBREVIATIONS.....	14
PREAMBLE.....	17
DETAILED SELF-ASSESSMENT QUESTIONNAIRE.....	18
ANNEX.....	331

### TABLES

1A. Summary of IOSCO Objectives and Principles of Securities Regulation .....	10
-------------------------------------------------------------------------------	----

## INTRODUCTION

<b>Jurisdiction:</b>	United States
<b>Authority:</b>	U.S. Commodity Futures Trading Commission
<b>Date prepared:</b>	July 31, 2014
<b>Contact name:</b>	Sarah Josephson
<b>Title:</b>	Director, Office of International Affairs
<b>Email address:</b>	<a href="mailto:sjosephson@cftc.gov">sjosephson@cftc.gov</a>

1. This self-assessment questionnaire has been prepared in reference to the Methodology to assess the implementation of the IOSCO Objectives and Principles of Securities Regulation approved by IOSCO
2. Section II provides important guidance that should be taken into account when preparing the responses to the self-assessment questionnaire that is particularly important for the IMF to initiate the assessment of the efficiency of supervision. Please pay particular attention to the fact that the scope of the IOSCO assessment extends beyond the primary securities regulator, if other authorities are responsible for regulating, supervising and/or enforcing any elements covered by the Principles.
3. As described in the following sections, the authorities are requested to provide (i) brief information on preconditions (section III); (ii) a summary of grades (section IV); and (iii) detailed answers to the self assessment questionnaire (section V).
4. Deadline for providing the fully completed self-assessment to the IMF is [July, 31, 2014](#). Questions on this document should be referred to IMF Assessors: Malcolm Rodgers, Ana Carvajal, and Eija Holttinen.
5. In your answers to the questions, please describe the content of your regulatory, supervisory and enforcement framework in detail and include precise references to the relevant laws, regulations and guidelines. Please also provide us with links to/PDF copies of them.

## ADDITIONAL GUIDANCE

### A. Additional Guidance for the Preparation of the Self-Assessment on the IOSCO Principles and Objectives of Securities Regulation

The self-assessment constitutes a critical input in the assessment process. It provides the authorities' own evaluation of the extent to which the jurisdiction is compliant with the IOSCO Objectives and Principles of Securities Regulation. A recurrent challenge for missions has been the fact that authorities do not always include sufficient information to allow assessors to determine whether the legal and regulatory framework described in the corresponding principle has been implemented in practice. As a result, assessors usually need to request additional information from the authorities under very tight timetable. The table below lists the most frequent cases where additional information has been requested in the past, so that the authorities can take it into consideration when preparing the self-assessment. The provision of this information should help achieve more effective and efficient meetings during the mission.

Number of the Principle and Question	Useful information to include in the self-assessment, under the response to the corresponding Principle/Question
1, Question 2.(a)	<ul style="list-style-type: none"> <li>Please ensure that your description identifies any possible division of responsibilities in the regulation and supervision of securities markets, activities and participants on the basis of the type of security, market participant (e.g. bank vs. securities dealer/broker) between the various statutory and self-regulatory authorities. Please note that the IOSCO assessment covers also banks' securities activities, and if more than one authority is responsible for the supervision of such activities, the discussion of Principles 1-5 should cover all those authorities. In such case, you are also expected to include information on the responsibilities and activities of all those authorities in all relevant Principles (particularly 10-12 and 29-32).</li> </ul>
1, Question 2.(b)	<ul style="list-style-type: none"> <li>Do other types of financial institutions offer securities like products (such as CIS-like insurance products or deposit instruments that mimic CISs/return based on market performance, etc.)?</li> <li>If so, how are these other products regulated with respect to disclosure, suitability for the client, etc.?</li> <li>Is the regulation that is applied equivalent to that which applies to equivalent securities products?</li> </ul>
1, Question 2.(d)	<ul style="list-style-type: none"> <li>Reference to any MoUs between the domestic authorities and</li> </ul>

	<ul style="list-style-type: none"> <li>the areas that they cover. If possible include copies. Reference to any committees between the domestic authorities, with indication of frequency of meetings, and types of issues discussed in the past.</li> </ul>
3, Question 2	<ul style="list-style-type: none"> <li>Information on the budget development of the relevant regulatory authorities, including source(s) of funding (for the last three years and any budgets or estimates available for the upcoming years).</li> </ul>
3, Question 3	<ul style="list-style-type: none"> <li>Information on number of staff dedicated to securities markets regulation and supervision, if possible with a break down by main functions (licensing, supervision of intermediaries, market surveillance, enforcement), as well as by profession.</li> <li>Information on average years of experience of staff at different levels of the organization, staff turnover, and competitiveness of the salaries vis-à-vis private sector</li> </ul>
5, Question 2 a)	<ul style="list-style-type: none"> <li>Details on the mechanisms in place to oversee that the staff complies with the Code of Conduct or other relevant ethical obligations.</li> </ul>
7, Question 1	<ul style="list-style-type: none"> <li>What information does the regulator have about securities activities in the jurisdiction, including about activities that are not subject to regulation? <ul style="list-style-type: none"> <li>Is this information complete, up to date and accurate?</li> <li>What kind of analysis/review is done on this information?</li> </ul> </li> </ul>
9, Question 3 c)	<ul style="list-style-type: none"> <li>Details on the SRO's supervision of its members, including on- and off-site examinations and enforcement activities over the past 3-5 years (same kind of information as listed under Pr. 12, Questions 1 and 9 below)</li> </ul>
9, Question 4 a)	<ul style="list-style-type: none"> <li>Detailed information on the regulator's oversight program in all entities that qualify as SROs as per Principle 9, including both off-site reporting and on-site inspections. With regards to the latter, include information on the cycle of inspections and their scope/coverage.</li> </ul>
12, Question 1 for issues related to supervision and question 9 for issues related to enforcement	<ul style="list-style-type: none"> <li>For both supervision and enforcement, include the quantitative information listed below for the last three years (the authorities are encouraged to provide a longer set of data, e.g., five years). If supervision and enforcement are (also) carried out by the exchanges or a SRO, please provide the corresponding information also on their activities. <u>For supervision of market intermediaries and fund managers:</u> <ul style="list-style-type: none"> <li>For periodic inspections: number of inspections carried out, with a break down by type of firm, and by type of inspection (due to regular program, and due to complaint/cause). It is important that information be included on the <u>criteria</u> used to select firms, and on the frequency and scope of inspections</li> <li>Thematic inspections (i.e. inspections focusing on a particular theme across a larger group of supervised entities): number</li> </ul> </li> </ul>

	<p>and themes and how many firms were covered in each thematic inspection. It is important that information be included on the way the themes are selected.</p> <p><u>For administrative/civil enforcement:</u></p> <ul style="list-style-type: none"> <li>• Number of investigations opened on an annual basis and number of investigations finalized on an annual basis, if possible with a break down by type of misconduct</li> <li>• Number of sanctions imposed on an annual basis, if possible with a break down by type of sanctions, type of participant, and type of misconduct.</li> </ul> <p><u>For criminal enforcement</u></p> <ul style="list-style-type: none"> <li>• Number of cases referred to the criminal authorities on an annual basis, if possible with a break down by type of criminal offense.</li> <li>• Number of sanctions imposed on an annual basis, if possible with a break down by type of criminal offense.</li> </ul>
14, Questions 5, 6 and 9 and Principle 15, Questions 1 to 7	<ul style="list-style-type: none"> <li>• Number of MoUs with foreign authorities and the areas that they cover.</li> <li>• Information on number of requests for assistance received from foreign regulators in the last three years (per type of request if possible), and average time that it takes to process them.</li> <li>• If requests for information have been refused, how many refusals there have been and what reasons were given for refusal.</li> </ul>
16, Questions 1 and 2	<ul style="list-style-type: none"> <li>• If there are initial offerings that are exempt from public disclosure requirements, describe the types of exemptions available, e.g. by type of transaction, securities or investor.</li> <li>• If there are any offerings that are required to have initial disclosure documents but thereafter are exempt from continuous disclosure requirements – either immediately or after a period of time, please describe them (e.g. only held by a small number of investors or not listed on an exchange).</li> <li>• If there are special disclosure regimes for particular types of securities (such as asset-backed securities, structured products, ETFs), describe how these rules differ from the general requirements.</li> <li>• What disclosure requirements apply to standardized exchange-traded instruments (e.g. options, futures)</li> </ul>
16, Questions 5, 6 and 9	<ul style="list-style-type: none"> <li>• Information on the system to review prospectuses, for example whether all prospectuses are reviewed or just a sample, and if only a sample, what the criteria are to select the prospectuses that will be reviewed. Similar type of information should be provided for the review of periodic reports and material event disclosures. If such review is carried out by the exchanges or a SRO, please provide the corresponding</li> </ul>

	<p>information based on what the exchanges or SRO do.</p> <ul style="list-style-type: none"> <li>• Information on the number of prospectuses and listing documents filed with the regulator (or exchange or a SRO) for the last three years.</li> <li>• Number of sanctions imposed on issuers and others involved in the issuing process during the last three years, if possible with a break down by type of misconduct.</li> <li>• Information on the number of public offerings or listings by foreign issuers within the jurisdiction for the last three years.</li> </ul>
19, Questions 1, 4, 6 and 7 and Principle 20, Question 7	<ul style="list-style-type: none"> <li>• Information on any oversight program in place for auditors, with indication of whether on-site inspections are carried out on a periodic basis, or only for cause. If on a periodic basis, include information on the criteria used to select the auditors to be inspected, as well as inspection cycles.</li> <li>• Information on sanctions imposed on auditors, if possible for the last three years.</li> </ul>
21, Question 4	<ul style="list-style-type: none"> <li>• Information on the system to review financial statements, for example whether all financial statements are reviewed or just a selection of them, and if the latter, include information on the criteria. If such review is carried out by the exchanges or a SRO, please provide the corresponding information based on what the exchanges or SRO do.</li> </ul>
22, Question 2	<ul style="list-style-type: none"> <li>• Number of inspections carried out in CRAs (if applicable), by type of inspection (due to regular program, and due to complaint/cause). It is important that information be included on the criteria used to select firms, frequency and scope of inspections.</li> </ul>
24, Question 1 a)	<ul style="list-style-type: none"> <li>• Describe the regulation of CIS only sold to sophisticated investors (non-retail or wholesale funds) and how it differs from the regulation of retail funds.</li> </ul>
24, Question 1 b)	<ul style="list-style-type: none"> <li>• Cover in your response all entities involved in the operation of a CIS, including the fund management company, asset manager, fund administrator, custodian etc.</li> </ul>
24, Questions 8 and 9	<ul style="list-style-type: none"> <li>• For the periodic inspection plan of CIS operators, custodians and CIS: number of inspections carried out, with a break down by type of firm, and by type of inspection (due to regular program, and due to complaint/cause). It is important that information be included on the <u>criteria</u> used to select firms and on the frequency and scope of inspections.</li> <li>• Thematic inspections: number and themes. It is important that information be included on the way the themes are selected.</li> <li>• Number of sanctions imposed on fund managers during the last three years, if possible with a break down by type of misconduct</li> </ul>
26, Questions 6, 7 and 9	<ul style="list-style-type: none"> <li>• Information on the system, if any, to review the CIS offering documents, for example whether all offering documents are</li> </ul>

	<p>reviewed or just a sample, and if only a sample, what the criteria are to select the documents that will be reviewed. Similar type of information should be provided for the review of periodic reports and other disclosure documents. If such review is carried out by the exchanges or a SRO, please provide the corresponding information based on what the exchanges or SRO do.</p> <ul style="list-style-type: none"> <li>• Information on the number of offering documents filed with the regulator in the last three years.</li> <li>• Number of sanctions imposed on CIS operators and others involved in the preparation of CIS disclosure documents or advertisements, if possible with a break down by type of misconduct.</li> </ul>
28, Question 1	<ul style="list-style-type: none"> <li>• Does the jurisdiction have a definition of hedge fund? If so, please provide it.</li> </ul>
28, Question 8	<ul style="list-style-type: none"> <li>• Number of inspections carried out in hedge fund managers/ advisers and/ or hedge funds (if applicable), by type of inspection (due to regular program, and due to complaint/cause). It is important that information be included on the criteria used to select firms and on the frequency and scope of inspections.</li> </ul>
31, Question 19	<ul style="list-style-type: none"> <li>• For the periodic inspection plan of intermediaries: number of inspections carried out, with a break down by type of intermediary, and by type of inspection (due to regular program, and due to complaint/cause). It is important that information be included on the <u>criteria</u> used to select firms and on the frequency and scope of inspections.</li> <li>• Thematic inspections: number and themes. It is important that information be included on the way the themes are selected.</li> <li>• Number of sanctions imposed on market intermediaries during the last three years, if possible with a break down by type of misconduct.</li> </ul>
32, Question 3 d)	<ul style="list-style-type: none"> <li>• Is there a compensation fund for investors or a settlement/default fund at a clearing house? <ul style="list-style-type: none"> <li>• What losses are covered?</li> <li>• Who is covered?</li> </ul> </li> </ul>
32, Question 4	<ul style="list-style-type: none"> <li>• If applicable, concrete examples of how the regulator has dealt with a failure of a market intermediary.</li> </ul>
34, Question 1	<ul style="list-style-type: none"> <li>• Information on the oversight of exchanges and trading platforms, including both off site reporting and on-site inspections. For the latter, please include information on the frequency and scope of inspections.</li> </ul>
36, Questions 2 and 3	<ul style="list-style-type: none"> <li>• Information on administrative/ civil sanctions imposed during the last three years on major misconducts, such as market manipulation and insider trading.</li> <li>• Information on criminal sanctions imposed for major offenses,</li> </ul>



	such as insider trading and market manipulation.
--	--------------------------------------------------

## SUMMARY GRADINGS

Grading	Number of Principles
Fully Implemented (FI)	32
Broadly implemented (BI)	1
Partly implemented (PI)	
Not Implemented (NI)	
Not applicable (NA)	5
Total	38

Table 1: Summary of IOSCO Objectives and Principles of Securities Regulation		Grade
Principle 1	- The responsibilities of the Regulator should be clear and objectively stated	FI
Principle 2	The Regulator should be operationally independent and accountable in the exercise of its powers and functions	FI
Principle 3	The Regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.	FI
Principle 4	- The Regulator should adopt clear and consistent regulatory processes	FI
Principle 5	The staff of the Regulator should observe the highest professional standards including appropriate standards of confidentiality	FI
Principle 6	The Regulator should have or contribute to a process to monitor, mitigate and manage systemic risk, appropriate to its mandate	FI
Principle 7	The Regulator should have or contribute to a process to review the perimeter of regulation regularly.	FI
Principle 8	The Regulator should seek to ensure that conflicts of interest and misalignment of incentives are avoided, eliminated, disclosed or otherwise managed.	FI
Principle 9	Where the regulatory system makes use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, such SROs should be subject to the oversight of the Regulator and should observe standards of fairness and confidentiality	FI

Table 1: Summary of IOSCO Objectives and Principles of Securities Regulation		Grade
when exercising powers and delegated responsibilities.		
Principle 10	The Regulator should have comprehensive inspection, investigation and surveillance powers.	FI
Principle 11	- The Regulator should have comprehensive enforcement powers.	FI
Principle 12	The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and - implementation of an effective compliance program.	FI
Principle 13	Regulator should have the authority to share both public and non-public information with domestic and foreign counterparts.	FI
Principle 14	Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with - their domestic and foreign counterparts	FI
Principle 15	The regulatory system should allow for assistance to be provided to foreign Regulators who need to make inquiries in the discharge of their functions - and exercise of their powers.	FI
Principle 16	There should be full, accurate and timely disclosure of financial results, risk - and other information which is material to investors' decisions.	N/A
Principle 17	Holders of securities in a company should be treated in a fair and equitable manner.	N/A
Principle 18	Accounting standards used by issuers to prepare financial statements - should be of a high and internationally acceptable quality.	N/A
Principle 19	- Auditors should be subject to adequate levels of oversight.	FI
Principle 20	- Auditors should be independent of the issuing entity that they audit	FI
Principle 21	- Audit standards should be of a high and internationally acceptable quality	FI

Table 1: Summary of IOSCO Objectives and Principles of Securities Regulation		Grade
Principle 22	Credit rating agencies should be subject to adequate levels of oversight. The regulatory system should ensure that credit rating agencies whose ratings are used for regulatory purposes are subject to registration and ongoing supervision.	N/A
Principle 23	Other entities that offer investors analytical or evaluative services should be subject to oversight and regulation appropriate to the impact their activities have on the market or the degree to which the regulatory system relies on them.	FI
Principle 24	The regulatory system should set standards for the eligibility, governance, organization and operational conduct of those who wish to market or operate a collective investment scheme.	FI
Principle 25	The regulatory system should provide for rules governing the legal form and structure of CIS and the segregation and protection of client assets.	FI
Principle 26	Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a CIS for a particular investor and the value of the investor's interest in the CIS.	FI
Principle 27	Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units/shares in a CIS.	FI
Principle 28	Regulation should ensure that hedge funds and/or hedge funds managers/advisers are subject to appropriate oversight.	FI
Principle 29	Regulation should provide for minimum entry standards for market intermediaries.	FI
Principle 30	There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.	BI
Principle 31	Market intermediaries should be required to establish an internal function that delivers compliance with standards for internal organization and operational conduct, with the aim of protecting the interests of clients and their assets and ensuring proper management of risk, through which management of the intermediary accepts primary responsibility for these matters.	FI

Table 1: Summary of IOSCO Objectives and Principles of Securities Regulation		Grade
Principle 32	There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to - contain systemic risk.	FI
Principle 33	The establishment of trading systems including securities exchanges should - be subject to regulatory authorization and oversight.	FI
Principle 34	There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate - balance between the demands of different market participants.	FI
Principle 35	- Regulation should promote transparency of trading.	FI
Principle 36	Regulation should be designed to detect and deter manipulation and other - unfair trading practices	FI
Principle 37	Regulation should aim to ensure the proper management of large - exposures, default risk and market disruption	FI
Principle 38	Securities settlement systems and central counterparties should be subject to regulatory and supervisory requirements that are designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.	Not to be assessed.
<i>Aggregate Level:</i> Implemented (FI), Broadly Implemented (BI), Partially Implemented (PI), Non-Implemented (NI), Not applicable (N/A).		

## LIST OF ABBREVIATIONS

### U.S. Federal Law

APA	Administrative Procedure Act
Bank Secrecy Act	Currency and Foreign Transactions Reporting Act of 1970
CEA	Commodity Exchange Act
CFMA	Commodity Futures Modernization Act of 2000
CRARA	Congressional Review of Agency Rulemaking Act
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
FOIA	Freedom of Information Act
PRA	Paperwork Reduction Act
RFPA	Right to Financial Privacy Act
Securities Act	Securities Act of 1933
Securities Exchange Act	Securities Exchange Act of 1934
Sunshine Act	Government in the Sunshine Act
1974 Act	CFTC Act of 1974

### CFTC Divisions and Offices

DCR	Division of Clearing and Risk
DMO	Division of Market Oversight
DOE	Division of Enforcement
DSIO	Division of Swap Dealer and Intermediary Oversight
OCE	Office of the Chief Economist
OGC	Office of the General Counsel
OIA	Office of International Affairs
OIG	Office of the Inspector General

### U.S. Federal Departments and Agencies

CFTC or Commission	Commodity Futures Trading Commission
DOJ	Department of Justice
EPA	Environmental Protection Agency
FERC	Federal Energy Regulatory Commission
Federal Reserve	Board of Governors of the Federal Reserve System
FDIC	Federal Deposit Insurance Corporation
FHFA	Federal Housing Finance Agency
FSOC	Financial Stability Oversight Council
FTC	Federal Trade Commission
GAO	Government Accountability Office
NCUA	National Credit Union Administration
OCC	Office of the Comptroller of the Currency

OMB	Office of Management and Budget
SEC	Securities and Exchange Commission
Treasury Department	Department of the Treasury
USDA	Department of Agriculture

### Other Abbreviations

AICPA	American Institute of Certified Public Accountants
AML	Anti-Money Laundering
CDS	Credit Default Swaps
CME	Chicago Mercantile Exchange
CPO	Commodity Pool Operator
CTA	Commodity Trading Advisor
DCM	Designated Contract Market
DCO	Derivatives Clearing Organization
DSRO	Designated Self-regulatory Organization
ECP	Eligible Contract Participant
ETF	Exchange Traded Fund
FASB	Financial Accounting Standards Board
FATF	Financial Action Task Force
FCM	Futures Commission Merchant
FBOT	Foreign Board of Trade
FinCEN	Financial Crimes Enforcement Network
FINRA	Financial Industry Regulatory Authority
GAAS	Generally Acceptable Accounting Standards
IB	Introducing Broker
ICC	ICE Clear Credit
ICE	Intercontinental Exchange
IOSCO	International Organization of Securities Commissions
IOSCO MMOU	IOSCO Multilateral Memorandum of Understanding
MSP	Major Swap Participant
MLWG	Money Laundering Working Group
MOU	Memorandum of Understanding
NFA	National Futures Association
OFR	Office of Financial Research
OTC	Over-the-counter
PCAOB	Public Company Accounting Oversight Board
RER	Rule Enforcement Review
RFA	Registered Futures Association
SD	Swap Dealer
SDR	Swap Data Repository
SEF	Swap Execution Facility
SIDCO	Systemically Important Derivatives Clearing Organization

UNITED STATES

U.S. COMMODITY FUTURES TRADING COMMISSION

SRO

Self-regulatory Organization

Staff

Staff of the CFTC



## **PREAMBLE**

The CFTC is providing this self-assessment as part of the assessment of the United States being conducted by the International Monetary Fund ("IMF") as part of its Financial Sector Assessment Program ("FSAP"). One key component of the FSAP is an evaluation of the policies, practices, laws, and regulations administered by the CFTC against the IOSCO Core Principles of Securities Regulation ("IOSCO Principles").

In preparation for the IMF's assessment, CFTC Staff prepared a self-assessment as of June 1, 2014, of the Commission's compliance with the IOSCO Principles, based upon the IOSCO assessment methodology. This document sets forth CFTC Staff's responses to key questions contained in the methodology, and is being provided by the CFTC to the IMF to facilitate review of the CFTC's compliance with the IOSCO Principles.

This self-assessment has been prepared by the Staff of the CFTC solely for purposes of the IMF's 2015 FSAP of the United States and should not be considered outside the FSAP context. The responses contained herein are not rules, regulations, or statements of the Commission. Further the CFTC has neither approved nor disapproved these responses. Accordingly, any statements or responses contained herein are not binding and should not be deemed to constitute interpretative advice by the Staff of the CFTC or be used or relied upon for legal purposes.

## DETAILED SELF-ASSESSMENT QUESTIONNAIRE

The following questions have been developed by IOSCO as a tool to assess the level of implementation of the IOSCO Objectives and Principles of Securities Regulation. To answer them, the authorities should have as a reference the preamble, scope and explanatory notes included in the IOSCO Methodology, in connection with each Principle.

<b>PRINCIPLES RELATING TO THE REGULATOR (1-8)</b>	
<b>Principle 1</b>	<b>The responsibilities of the Regulator should be clear and objectively stated</b>
<b>Key Questions</b>	
<b>1.</b>	<b>Are the regulator's responsibilities, powers and authority:</b>
(a)	<b>Clearly defined and transparently set out, preferably by law, and in the case of powers and authority, enforceable?</b>
<p>Yes. The Commodity Futures Trading Commission ("CFTC" or "Commission") is an independent five-member Federal agency established in 1974 pursuant to the Commodity Exchange Act ("CEA").<sup>1</sup> The responsibilities, powers and authority of the CFTC are clearly defined and transparently set forth in the CEA and CFTC regulations promulgated thereunder.<sup>2</sup> In particular, the jurisdiction of the CFTC is established under Section 2(a) of the CEA while the powers of the CFTC are set forth in Section 8a of the CEA.</p> <p>It is the mission of the CFTC to protect market users and the public from fraud, manipulation, other abusive practices, and systemic risk related to derivatives, which are subject to the CEA and to foster open, transparent, competitive and financially sound markets.</p> <p>The Commission was directed by the U.S. Congress ("Congress") to police the derivatives markets, which includes futures, options and swaps contracts related to underlying commodities. These markets are critical to the efficient functioning of the global financial system and the economies it supports. The CEA vests the CFTC with exclusive jurisdiction over futures and commodity option transactions.<sup>3</sup> Subject to certain</p>	

<sup>1</sup> Section 2(a)(2)(A) of the CEA.

<sup>2</sup> See 7 U.S.C. 1, *et seq.*, and 17 C.F.R. 1, *et seq.* The CEA and CFTC regulations can be found on the Commission's website at: <http://www.cftc.gov/LawRegulation/index.htm>.

<sup>3</sup> Section 2(a)(1)(A) of the CEA grants the CFTC exclusive jurisdiction with respect to "accounts, agreements (including any transaction which is of the character of . . . an "option" . . . ) and "transactions involving swaps or contracts of sale of a commodity for future delivery (including significant price discovery contracts), traded or executed on a contract market designated pursuant to section 5 or a swap execution facility pursuant to section 5h or any other board of trade, exchange, or market, and transactions subject to regulation by the Commission pursuant to section 19 of this title." Section 1a(9) of the CEA defines the term "commodity" to mean wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, *Solanum tuberosum* (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice,

(continued)

exceptions, and to the CFTC's authority to exempt certain transactions or categories of transactions from most provisions of the CEA, all transactions in commodity futures contracts and all commodity option transactions are required to occur on or subject to the rules of designated contract markets ("DCMs").

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")<sup>4</sup> amended the CEA to establish a comprehensive statutory 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 ("SDs") and major swap participants ("MSPs"); (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, intermediaries and others subject to the Commission's oversight.

**Security Futures.** Section 2(a)(1)(D) of the CEA, and related securities laws, allocate jurisdiction over certain derivative products between the CFTC and the Securities and Exchange Commission ("SEC"). The SEC has authority to regulate options on securities, on groups and indices of securities, on certificates of deposit and on foreign currencies when traded on a national securities exchange.<sup>5</sup> The CFTC has exclusive jurisdiction over futures trading on government securities, foreign currency,<sup>6</sup> on certain non-narrow-based groups or indices of securities,<sup>7</sup> and over options on such futures.<sup>8</sup> In addition, security futures products—futures on individual stocks and narrow-based securities indexes—are subject to the joint jurisdiction of the CFTC and SEC.<sup>9</sup> Security futures products may be traded on any designated contract market ("DCM") that also is notice registered with the SEC as a national securities exchange.<sup>10</sup> Security futures products

---

and all other goods and articles, except onions (as provided by the first section of Public Law 85-839 (7 U.S.C. 13-1)) and motion picture box office receipts (or any index, measure, value, or data related to such receipts), and all services, rights, and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in. Swaps are defined in Section 1(a)(47) of the CEA and further defined by Commission regulation 1.3(xxx). The CEA specifically excepts from the CFTC's exclusive jurisdiction security futures products and the setting of margin levels for stock index futures contracts.

<sup>4</sup> Public Law 111-203, 124 Stat. 1376 (2010).

<sup>5</sup> Section 4c(f) of the CEA provides that the CEA is inapplicable "to any transaction in an option on foreign currency traded on a national securities exchange."

<sup>6</sup> CEA Sections 2(c)(1) and 2(c)(2)(A).

<sup>7</sup> CEA Section 2(a)(1)(c)(ii).

<sup>8</sup> *Id.*

<sup>9</sup> See Title II of the Commodity Futures Modernization Act ("CFMA"), Public Law 106-554 (Dec. 21, 2000).

<sup>10</sup> See SEC, Securities Exchange Act Release No. 44692 (August 13, 2001), 66 FR 43721 (Aug. 20, 2001).

may also be traded on any SEC-registered national securities exchange, national securities association, or alternative trading system that is notice designated as a DCM by the CFTC.<sup>11</sup>

**Agricultural Swaps.** The Dodd-Frank Act removed or revised the bilateral swaps exemptions added by the Commodity Futures Modernization Act of 2000 (“CFMA”)<sup>12</sup> by giving the Commission jurisdiction over swaps. CEA Section 2(d). The Dodd-Frank Act also included a general prohibition on any swap in an agricultural commodity unless permitted under the Commission’s Section 4(c) exemptive authority. The Commission issued such a rule under its Section 4(c) exemptive authority in August 2011 permitting the transaction of swaps in an agricultural commodity (or, “agricultural swaps”) subject to the same rules and regulations applicable to any other swap. Part 35 of the Commission’s regulations permits the transaction of swaps in an agricultural commodity to be treated like all other swaps transactions. CFTC Regulation 35.1(a). Swaps in an agricultural commodity may be traded on a swap execution facility (“SEF”) or DCM.<sup>13</sup>

**Trade Options/Commodity Options.** The Dodd-Frank Act includes a definition of “swap” that encompasses “commodity options.”<sup>14</sup> Pursuant to its rulemaking authority, the Commission determined commodity options are to be regulated as swaps.<sup>15</sup> However, a commodity option involving a physical (as opposed to a financial) commodity may avoid being regulated as a swap if it is (1) a commodity option embedded in a forward contract;<sup>16</sup> (2) a volumetric commodity option embedded in a forward contract; or (3) a trade option. To qualify as a trade option, a commodity option must involve a physical commodity (i.e., an exempt or agricultural commodity) and meet three conditions: (1) the option is offered by either an “eligible contract participant” (generally speaking, a financially sophisticated entity) or a commercial participant (i.e., a

<sup>11</sup> See Part 41 of the CFTC’s regulations.

<sup>12</sup> Public Law 101-554 (Dec. 21, 2000).

<sup>13</sup> See CFTC Regulation 35.1(b).

<sup>14</sup> See CEA Section 1a(47)(A)(i). Note that the swap definition excludes options on futures (which must be traded on a DCM pursuant to Part 33 of the Commission’s regulations) (see CEA section 1a(47)(B)(i)), but it includes options on physical commodities (whether or not traded on a DCM) (see CEA section 1a(47)(A)(i)). Other options excluded from the statutory definition of swap are options on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act of 1933 (“Securities Act”) and the Securities Exchange Act of 1934 (“Securities Exchange Act”) (see CEA section 1a(47)(B)(iii)) and foreign currency options entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act (see CEA section 1a(47)(B)(iv)). Note also that the Commission’s regulations define a commodity option transaction or commodity option as “any transaction or agreement in interstate commerce which is or is held out to be of the character of, or is commonly known to the trade as, an ‘option,’ ‘privilege,’ ‘indemnity,’ ‘bid,’ ‘offer,’ ‘call,’ ‘put,’ ‘advance guaranty’ or ‘decline guaranty.’” CFTC Regulation 1.3(hh).

<sup>15</sup> *Commodity Options*, 77 FR 25320 (Apr. 27, 2012).

<sup>16</sup> The CEA generally excludes forward contracts from CFTC jurisdiction (other than in cases of fraud or manipulation). A forward contract is “any sale of any cash commodity for deferred shipment or delivery.” See CEA Section 1a(19).

producer, processor, commercial user of, or merchant handling, the underlying physical commodity); (2) the option is offered to a commercial participant; and (3) the option is intended to be physically settled so that, if exercised, the option would result in the sale of an exempt or agricultural commodity for immediate or deferred shipment or delivery. While trade options are exempt from most of the rules applicable to swaps, they remain subject to certain, minimal regulatory requirements set out in CFTC regulations.<sup>17</sup>

**Excluded Financial Instruments.** Section 2(c)(1) of the CEA specifically excludes from the CEA certain transactions in specified financial instruments including foreign currency, government securities, security rights, security warrants, resales of installment loan contracts, repurchase transactions in excluded commodities,<sup>18</sup> mortgages and mortgage commitments, unless conducted on an organized exchange. The Commodity Futures Trading Commission Act of 1974 originally exempted from the CFTC’s jurisdiction, among other things, contracts based on foreign currency and Treasury securities so long as the transactions did not involve the sale of a futures contract (or option thereon) or commodity options executed or traded on a futures exchange. The CFTC Reauthorization Act of 2008<sup>19</sup> clarified that the CFTC retains jurisdiction to regulate transactions in futures contracts (and options thereon) and commodity options based on excluded financial instruments to the extent that such transactions occur on a DCM.

**Foreign Currency Transactions.** The CFTC has anti-fraud jurisdiction over any agreement, contract or transaction in foreign currency that is offered by a futures commission merchant (“FCM”) or a retail foreign exchange dealer (“RFED”) on a leveraged or margined basis to persons who are not eligible contract participants (“ECPs”),<sup>20</sup> as if the foreign currency contracts were “futures contracts.”<sup>21</sup> The CFTC also has jurisdiction over foreign currency futures or options on foreign currencies (unless traded on a national securities exchange) entered into by persons who are not ECPs, where the counterparty to the transaction is an FCM or RFED. The CFTC does not have jurisdiction over retail forex transactions that are entered into by a financial institution (except an FCM or RFED), a registered broker-dealer, an insurance company, a financial holding company or an investment bank holding company.

<sup>17</sup> See CFTC Regulations 32.3(b)-(d).

<sup>18</sup> Excluded commodities are not themselves excluded from the CEA’s coverage. Instead, these commodities are “excluded” in the sense that they are eligible to be the underlying commodities for certain off-exchange contracts that are excluded from the CEA.

<sup>19</sup> Public Law 110-246 (June 18, 2008).

<sup>20</sup> ECP is defined in Section 1a(12) of the CEA to include financial institutions, insurance companies, registered investment companies, highly-capitalized commodity pools, entities and employee benefit plans, governmental entities, certain broker-dealers, futures commission merchants (“FCMs”), floor brokers/traders and high net worth individuals.

<sup>21</sup> See CEA Section 2(c)(2)(B).

Furthermore, pursuant to a written determination issued by the Secretary of the Treasury, foreign exchange forwards and foreign exchange swaps are not regulated as swaps under the CEA, with certain exceptions.<sup>22</sup> In addition, the CFTC does not have jurisdiction over bona fide foreign exchange spot transactions. A foreign exchange transaction will be considered a bona fide spot transaction if it settles via an actual delivery of the relevant currencies within two business days. In certain circumstances, however, a foreign exchange transaction with a longer settlement period concluding with the actual delivery of the relevant currencies may be considered a bona fide spot transaction depending on the customary timeline of the relevant market.

**Retail Forex Transactions.** The Commission adopted a comprehensive regulatory scheme to implement the provisions of the Dodd-Frank Act and the CFTC Reauthorization Act of 2008 with respect to off-exchange transactions in foreign currency with members of the retail public.

**Hybrid Instruments.** A “hybrid instrument” is defined in Section 1a(21) of the CEA to mean a security having one or more payments indexed to the value, level or rate of, or providing for the delivery of one or more commodities. The CFTC is not authorized to regulate hybrid instruments that are predominantly securities.<sup>23</sup> This provision enacted as part of the CFMA effectively expanded the exemption provided by CFTC regulations in Part 34, regulation of hybrid instruments.<sup>24</sup> A hybrid instrument is deemed to be predominantly a security and thus excluded from regulation under the CEA if: the issuer receives full payment of the purchase price of the instrument substantially contemporaneously with delivery of the instrument; the purchaser is not required to make any payment to the issuer in addition to the purchase price during the life of the instrument; the issuer is not subject, under the terms of the instrument, to mark-to-market margining requirements; and the hybrid is not marketed as a futures contract.

**Swaps.** The Dodd-Frank Act gave the CFTC regulatory authority over swaps and the SEC

<sup>22</sup> Section 1a(47)(E) of the CEA, as amended by the Dodd-Frank Act, vested the Secretary of the Treasury with the authority to determine whether foreign exchange swaps and foreign exchange forwards should be regulated as swaps under the CEA, provided that the Secretary makes a written determination satisfying certain criteria specified in Section 1b of the CEA. The Secretary of the Treasury issued such a written determination on November 16, 2012. See 77 Fed. Reg. 69694 (Nov. 20, 2012). Notwithstanding the written determination, foreign exchange swaps and foreign exchange forwards are still subject to the swap data repository (“SDR”) reporting requirements set forth in Section 4r of the CEA, and any party to a foreign exchange swap or foreign exchange forward that is an SD or MSP must comply with the business conduct standards requirements contained in Section 4s(h) of the CEA. See Sections 1a(47)(E)(iii)-(iv) of the CEA.

<sup>23</sup> See CEA Section 2(f).

<sup>24</sup> CFTC Regulation 34.2(a), adopted prior to the CFMA, defines “hybrid instrument” to mean an equity or debt security or depository instrument with one or more commodity-dependent components that have payment features similar to commodity futures or commodity options contracts or combinations thereof.

regulatory authority over security-based swaps. A swap is defined in Section 1a(47) of the CEA. A security-based swap is defined in Section 3(a)(68) of the Securities Exchange Act of 1934 ("Securities Exchange Act").<sup>25</sup> The terms were further defined through a joint rulemaking by the SEC and CFTC in August 2012.<sup>26</sup>

**DCMs.** DCMs are boards of trade that operate under the regulatory oversight of the CFTC, pursuant to Section 5 of the CEA.<sup>27</sup> DCMs are traditional futures exchanges that permit access to their facilities by all types of traders, including retail customers. DCMs may list for trading futures or options contracts based on any underlying commodity, index or instrument. With the passage of the Dodd-Frank Act, swaps may be traded and executed on a DCM.

To obtain and maintain its designation, a DCM must also comply with 23 Core Principles established in Section 5(d) of the CEA and Part 38 of the CFTC's regulations. Specifically, DCMs must comply on an initial and continuing basis with the following Core Principles: (1) designation as a contract market; (2) compliance with rules; (3) contracts not readily subject to manipulation; (4) prevention of market disruption; (5) position limits or accountability; (6) emergency authority; (7) availability of general information; (8) daily publication of trading information; (9) execution of transactions; (10) trade information; (11) financial integrity of transactions; (12) protection of markets and market participants; (13) disciplinary procedures; (14) dispute resolution; (15) governance fitness standards; (16) conflicts of interest; (17) composition of governing boards of contract markets; (18) recordkeeping; (19) antitrust considerations; (20) system safeguards; (21) financial resources; (22) diversity of board of directors; and (23) availability of certain records to the SEC.

DCMs may implement new rules or rule amendments or list new products by filing with the CFTC a certification that the rule or rule amendment complies with the CEA and CFTC regulations and policies and/or by requesting approval from the CFTC.

**SEFs.** SEFs are trading systems or platforms that operate under the regulatory oversight of the CFTC, pursuant to Section 5h of the CEA.<sup>28</sup> SEFs are platforms in which multiple participants have the ability to execute or trade swaps by accepting bids or offers made by multiple participants in the facility or system, through any means of interstate

<sup>25</sup> 15 U.S.C. 78c(a)(68).

<sup>26</sup> *Further Definition of "Swap," "Security-Based Swap," "Security-Based Swap Agreement," Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, 77 FR 48208 (Aug. 13, 2012).

<sup>27</sup> Part 38 of the CFTC's regulations details the procedures and requirements for operating a DCM.

<sup>28</sup> Part 37 of the CFTC's regulations details the procedures and requirements for operating a DCM.



commerce. Only swaps may be traded and executed on a SEF regulated by the CFTC.

No person may operate a facility for the trading or processing of swaps unless the facility is registered as a SEF or DCM.<sup>29</sup> To register and maintain registration as a SEF, a SEF must comply with 15 Core Principles established in Section 5h of the CEA and Part 37 of the CFTC's regulations. Specifically, a SEF must comply on an initial and continuing basis with the following Core Principles: (1) compliance with core principles; (2) compliance with rules; (3) swaps not readily subject to manipulation; (4) monitoring of trading and trade processing; (5) ability to obtain information; (6) position limits or accountability; (7) financial integrity of transactions; (8) emergency authority; (9) timely publication of trading information; (10) recordkeeping and reporting; (11) antitrust considerations; (12) conflicts of interest; (13) financial resources; (14) system safeguards; and (15) designation of chief compliance officer.

SEFs may implement new rules or rule amendments or list new products by filing with the CFTC a certification that the rule or rule amendment complies with the CEA and CFTC regulations and policies and/or by requesting approval from the CFTC.

**DCOs.** DCOs are derivatives clearing organizations that operate under the regulatory oversight of the CFTC, pursuant to Section 5b of the CEA.<sup>30</sup> A derivatives clearing organization is a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that with respect to an agreement, contract, or transaction enables each party to an agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the DCO for the credit of the parties; arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by participants in the DCO; or otherwise provides clearing services or arrangements that mutualize or transfer among participants in the DCO the credit risk arising from such agreements, contracts, or transactions executed by the participants.

To register and maintain registration as a DCO, a DCO must comply with 18 Core Principles established in Section 5b of the CEA and Part 39 of the CFTC's regulations. Specifically, a DCO must comply on an initial and continuing basis with the following Core Principles: (1) compliance with core principles; (2) financial resources; (3) participant and product eligibility; (4) risk management; (5) settlement procedures; (6) treatment of funds; (7) default rules and procedures; (8) rule enforcement; (9) system safeguards; (10) reporting; (11) recordkeeping; (12) public information; (13) information sharing; (14) antitrust considerations; (15) governance fitness standards; (16) conflicts of interest; (17)

<sup>29</sup> A facility that is registered with the SEC as a security-based SEF must also register with the Commission if it intends to operate a facility to trade swaps. CEA Section 5h(a)(2).

<sup>30</sup> Part 39 of the CFTC's regulations details the procedures and requirements for operating a DCO.



composition of governing boards; and (18) legal risk.

DCOs generally may implement new rules or rule amendments by filing with the CFTC a certification that the rule or rule amendment complies with the CEA and CFTC regulations and policies and/or by requesting approval from the CFTC. A DCO that has been designated by Financial Stability Oversight Council ("FSOC") as systemically important ("SIDCO"), however, must provide notice to the Commission no less than 60 days in advance of any proposed changes to its rules, procedures or operations that could materially affect the nature or level of risks presented by the SIDCO.

**Commodity Pools.** The solicitation of funds for investment in a commodity pool<sup>31</sup> constitutes the offer of a "security" that Section 4(m) of the CEA states necessitates compliance with certain provisions of the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act. Separately, the CFTC maintains jurisdiction over the operation of commodity pools and has issued regulations mandating, among other things, certain required disclosures in connection with the offer of a pool.<sup>32</sup> As a practical matter, public offers for commodity pools are generally made by one prospectus that complies with both the securities laws and the CFTC's commodity pool regulations. Although the majority of all commodity pools are private placements, and therefore subject primarily to CFTC substantive regulation,<sup>33</sup> issuers of exchange-traded products ("ETPs") have launched commodity-based ETPs for trading on national securities exchanges. As a result, these products are subject to "dual" regulation by both the CFTC and SEC consisting of commodity pool operator ("CPO") registration and regulation, disclosure requirements under both the CEA and Federal securities laws, and securities exchange regulation.

CFTC Regulation 4.5 excludes from the definition of CPO, and therefore application of the CEA and CFTC regulations related to pools and their related advisors, certain collective investment vehicles that are otherwise regulated entities, such as certain registered investment companies, insurance company separate accounts, banks and trust companies and certain defined benefit (pension) plans. CFTC Regulation 4.13 also provides exemptions from CPO registration for CPOs that meet specified criteria, including small or family pools, and pools that engage in minimal futures trading. The CFTC, pursuant to CFTC Regulation 4.12, can also exempt entities from the application of

<sup>31</sup> Although the CEA does not define the term "commodity pool", CFTC Regulation 4.10(d)(1) defines "pool" to mean any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.

<sup>32</sup> See CFTC Regulations 4.21, 4.24, 4.25 and 4.26.

<sup>33</sup> The SEC, however, does retain anti-fraud and anti-manipulation authority over the securities of such commodity pool offerings.

Part 4 of the CFTC's regulations in appropriate cases.

**Intermediaries.** The CFTC regulates the following categories of intermediaries:

- "Futures Commission Merchant" is defined as any person who solicits or accepts orders to buy or sell futures, options, swaps, or leverage contracts, security futures products, or any transaction described in Section 2(c)(2)(C)(i) or Section 2(c)(2)(D)(i) of the CEA, or acts as a counterparty in any transaction described in those sections, and who, in connection with the order, accepts any money or other property (or extends credit) to margin, guarantee, or secure the contracts resulting from these activities. See CFTC Regulation 1.3(p).
- "Swap dealer" is defined as any person who holds itself out as a dealer in swaps, makes a market in swaps, regularly enters into swaps with counterparties as an ordinary course of business for its own account, or engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps, subject to certain exemptions for entities that engage in a *de minimis* quantity of swap dealing in connection with transactions with or on behalf of customers. The term was further defined through a joint rulemaking between the SEC and CFTC published in May 2012.<sup>34</sup> See CFTC Regulation 1.3(ggg).
- "Major swap participant" is defined as any person who is not an SD and maintains a substantial position in swaps for any of the major swap categories (excluding both positions held for hedging or mitigating commercial risk and certain positions maintained by employee benefit plans), or whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets, or is a financial entity that is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency, subject to certain exclusions. The term was also further defined through joint rulemaking between the SEC and CFTC. See CFTC Regulation 1.3(hhh).
- "Introducing Broker" is any person who solicits or accepts orders to buy or sell futures, options, swaps, or leverage transaction contracts, security futures products, or any transaction described in Section 2(c)(2)(C)(i) or 2(c)(2)(D)(i) of the CEA, but who does not accept any money or property (or extend credit) to margin, guarantee or secure the contracts. See CFTC Regulation 1.3(mm).
- "Floor trader" is a person who trades contracts on DCMs and/or SEFs for his own account. See CFTC Regulation 1.3(x).

<sup>34</sup> Further Definition of Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant," 77 FR 30596 (May 23, 2012).

- “Floor broker” is a person who trades contracts on DCMs and/or SEFs for the account of others. See CFTC Regulation 1.3(n).
- “Foreign futures and options broker” is any non-U.S. person that is a member of a non-U.S. exchange or self-regulatory organization (“SRO”) and subject to regulation in such foreign jurisdiction. Also included are foreign affiliates of U.S. firms that are licensed and subject to regulation in such non-U.S. jurisdiction. See CFTC Regulation 30.1(e).
- “Leverage Transaction Merchant” is a category of registrant established by the CFTC in 1984 for persons engaged in the solicitation, execution or acceptance of leverage contracts. There currently are no registered leverage transaction merchants. See CFTC Regulation 1.3(oo).
- “Commodity Trading Advisor” is defined as any person who, for compensation or profit, is engaged in the business of providing commodity interest advisory services to others. See CFTC Regulation 1.3(bb).
- “Commodity Pool Operator” is defined as any person who solicits funds from others for the purpose of pooling the funds for use in investing in commodity interests. As noted above, pools also may be regulated by the SEC if publicly offered or under the Investment Company Act of 1940, under certain circumstances. See CFTC Regulation 1.3(cc).
- “Retail Foreign Exchange Dealer” is defined in CFTC Regulation 5.1(h)(1) as any person who is, or offers to be, the counterparty to an off-exchange retail forex transaction, but does not include persons that are regulated by another financial regulator, such as banks or securities broker dealers. FCMs may also be the counterparty to such off-exchange retail forex transactions but, unlike FCMs, retail foreign exchange dealers (“RFEDs”) may not engage in exchange-traded commodities transactions. See CFTC Regulation 5.1(h).

The CEA and CFTC Regulations impose requirements related to licensing, conduct of business, mandatory firm capital and custodianship of customer assets. In addition, the CEA requires the officers of the above registrants and persons who solicit funds or supervise such persons within such registrants to register as associated persons (“APs”).

In addition to the standards established by the American Institute of Certified Public Accountants (“AICPA”), the Public Company Accounting Oversight Board (“PCAOB”), and the Financial Accounting Standards Board (“FASB”), CFTC regulations establish requirements pertaining to independent public accountants who audit CFTC registrants. For example, under CFTC Regulation 1.16 the CFTC will recognize only a licensed certified public accountant or licensed public accountant who is in good standing under the laws of the place of his or her residence or principal place of business and such accountants’

report must be prepared consistent with the requirements of CFTC Regulation 1.16(c)(1). The CFTC also has worked with AICPA to provide guidance on the application of accounting standards to CFTC registrants.

**Foreign Brokers.** Part 30 of the CFTC regulations govern the offer and sale of foreign futures and options contracts to customers located in the U.S. As set forth in CFTC Regulation 30.4, any domestic or foreign person engaged in activities like those of an FCM, IB, CPO or CTA must register in the appropriate capacity or seek an exemption from registration under CFTC Regulations 30.5 or 30.10.

CFTC Regulation 30.5 provides an exemption from registration for any person located outside of the U.S. who is required to be registered with the CFTC under Part 30 other than a person required to be registered as an FCM. A foreign futures or options broker in such case is required to consent to the jurisdiction of the U.S. courts and the CFTC with respect to dealings with U.S. customers, and engage in all transactions subject to regulation under Part 30 through a registered FCM or foreign broker who has received confirmation of exemption from registration as an FCM under CFTC Regulation 30.10.

CFTC Regulation 30.10 permits a person affected by any of the requirements contained in Part 30 of the Commission's regulations to petition the Commission for an exemption from such requirements. If the CFTC determines that compliance with the foreign jurisdiction's regulatory program would offer "comparable" protection to persons located in the U.S. and there is an information sharing arrangement between the Commission and the firm's home country regulator, the CFTC will consider issuance of an order to the foreign regulator or SRO granting general relief, subject to certain conditions.

**Margin Authority.** Section 2(a)(1)(C)(v) of the CEA requires any DCM that trades stock index futures contracts (or options thereon) to file with the Board of Governors of the Federal Reserve System ("Federal Reserve") any rule establishing or changing the levels of margin (initial and maintenance) for that contract and authorizes the Federal Reserve to set the margin levels. Under the authority of that section, the Federal Reserve delegated such margin authority to the CFTC in 1993, subject to an annual reporting requirement to the Federal Reserve.

**Dual Registration.** Securities broker-dealers registered with the SEC may also dually register in the above-referenced CFTC categories. In this regard, many of the largest FCMs are also registered with the SEC as securities broker-dealers. The Commission's regulatory structure recognizes that such entities are subject to dual registration and attempts to harmonize regulations where possible. For example, the Commission and the SEC have implemented a uniform capital and financial reporting regime for dual-registrant FCMs/broker-dealers, which allows such entities to meet the requirements of both agencies by following a single set of coordinated regulations. In addition, banks that intermediate futures transactions for customers typically establish subsidiaries to

	conduct such business due to the requirements of banking regulators, as well as the liquidity requirements of CFTC capital rules. FCM subsidiaries of bank holding companies are subject to Federal Reserve examination and certain other requirements.
(b)	If the regulator can interpret its authority, are the criteria for interpretation clear and transparent?
	<p>The CFTC can interpret how to apply the authority granted to it by the CEA. The CEA also grants the CFTC broad exemptive authority under Section 4(c) as well as broad rulemaking authority under Section 8a(5).<sup>35</sup></p> <p>Yes. The criteria for interpreting the CFTC's authority are clear and transparent. The CFTC largely interprets the CEA based on the plain meaning of the statute and available legislative history as related to relevant markets and market participants. CFTC rulemaking is employed to administer and implement various provisions of the CEA as provided for in Section 8a(5) of the CEA. The rulemaking process is governed by Section 553 of the Administrative Procedure Act ("APA") and other various statutes that prescribe the manner in which the CFTC may adopt rules and regulations. As set forth below in 1.1(c), this process is fully transparent with CFTC rule proposals and adoptions, concept releases and interpretations published in the <i>Federal Register</i>. CFTC staff may also provide guidance to market participants and practitioners on a variety of legal and regulatory matters. Although not legally binding on the CFTC, these staff interpretations provide guidance on a host of CEA and related issues.</p>
(c)	Is the interpretative process transparent enough to preclude situations in which an abuse of discretion can occur?
	Yes. Section 553 of the APA requires agencies to incorporate a concise general statement of the basis and purpose for adopted rules. Generally, all CFTC orders, exemption letters and advisories contain written explanations of the basis for such actions. These CFTC actions are publicly disclosed in the <i>Federal Register</i> and/or the CFTC's Web site at <a href="http://www.cftc.gov">http://www.cftc.gov</a> . Parties affected by any such CFTC actions may also seek judicial review by the Federal courts.
2.	When more than one domestic authority is responsible for securities regulation:
(a)	Where responsibility is divided among regulators, is legislation designed to avoid regulatory differences or gaps?
	Yes. For example, Sections 712(b) and 712(c) of the Dodd-Frank Act delimit the CFTC's jurisdiction and the SEC's jurisdiction with respect to swaps and security-based swaps, respectively, and provide that either agency may object if the other promulgates a rule, regulation or order that conflicts with the statutory delimitation. In addition, Section 718 of the Dodd-Frank Act provides a coordinated review process in connection with novel derivatives products that both the CFTC and SEC may use in determining the regulatory

<sup>35</sup> The Commission may also interpret its authority through adjudicatory proceedings under Parts 10 and 12 of the Commission's regulations.

status of these instruments.

The Dodd-Frank Act also requires that the CFTC, SEC and U.S. prudential regulators coordinate with each other with respect to certain rulemakings. Section 712(a)(1) of the Dodd-Frank Act provides that, before the Commission commences any rulemaking or issues an order regarding swaps pursuant to Subtitle A of Title VII of the Dodd-Frank Act (which relates to regulation of the over-the-counter (“OTC”) swaps markets), the Commission shall “consult and coordinate to the extent possible with the [SEC] and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.” Section 712(a)(2) of the Dodd-Frank Act has a parallel provision with respect to rulemakings commenced by the SEC, requiring it to consult with the CFTC and the U.S. prudential regulators.

Section 712(d) of the Dodd-Frank Act requires that the CFTC and the SEC, in consultation with the Federal Reserve, further define the terms “swap,” “security-based swap,” “swap dealer,” “security-based swap dealer,” “major swap participant,” “major security-based swap participant,” “eligible contract participant,” and “security-based swap agreement” (which, as noted below, the agencies have completed).

In addition, Section 752(a) of the Dodd-Frank Act provides in part that “[i]n order to promote effective and consistent global regulation of swaps and security-based swaps, the [CFTC], the [SEC], and the prudential regulators . . . as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps ...”

Section 619 of the Dodd-Frank Act, commonly known as the “Volcker rule,” adds a new Section 13 to the Bank Holding Company Act of 1956 which, in subsection (b)(2)(B)(ii), requires the Commission, the SEC and the Federal banking agencies to “consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations [issued under this section] are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the [Federal Reserve].” Under this authority, the Commission, along with the SEC and the Federal banking agencies, issued final rules to implement the Volcker rule.<sup>36</sup> The Federal banking agencies involved in this consultation are, in addition to the Federal Reserve, the Federal Deposit Insurance Corporation (“FDIC”) and the Office of the Comptroller of the Currency (“OCC”).

---

<sup>36</sup> *Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds*, 79 FR 5808 (Jan. 31, 2014).

(b) Is substantially the same type of conduct and product generally subject to consistent regulatory requirements?
<p>Yes. See response to Principle 1, Question 2(a). In particular, Section 712(a)(7)(A) of the Dodd-Frank Act provides that “[i]n adopting rules and orders under this subsection [i.e., those relating to swaps and security-based swaps] the [Commission] and the [SEC] shall treat functionally or economically similar products or entities ... in a similar manner.” Section 712(a)(7)(B), however, provides “[n]othing in this subtitle requires the [CFTC] or the [SEC] to adopt joint rules or orders that treat functionally or economically similar products or entities . . . in an identical manner.”</p> <p><b>SEC.</b> The SEC and CFTC have strived to recommend changes to their respective statutes and regulations that would eliminate differences with respect to similar types of financial instruments so that the agencies’ regulations are harmonized when appropriate: (1) <i>Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF</i>, 76 FR 71128 (Nov. 16, 2011); (2) <i>Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators</i>, 78 FR 52308 (Aug. 22, 2013); (3) <i>Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant,” and “Eligible Contract Participant,”</i> 77 FR 30596 (May 23, 2012); (4) <i>Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,</i> 77 FR 48208 (Aug. 13, 2012); and (5) <i>Identity Theft Red Flag Rules</i>, 78 FR 23638 (Apr. 19, 2013).</p> <p><b>FERC.</b> The Federal Energy Regulatory Commission (“FERC”) and CFTC signed two memoranda of understanding (“MOUs”) mandated by the Dodd-Frank Act to address circumstances of overlapping jurisdiction and to share information in connection with market surveillance and investigations into potential market manipulation, fraud or abuse. The CFTC and FERC have overlapping jurisdiction over energy commodities, but the CFTC has exclusive jurisdiction over swaps and futures transactions.</p>
(c) Are responsible authorities required to cooperate and communicate in areas of shared responsibility?
See (d) below.
(d) Are there arrangements for cooperation and communication between responsible authorities through appropriate channels and are cooperation and communication occurring between responsible authorities without significant limitations?
<p>Yes. The Chairperson of the CFTC is a member of the FSOC. FSOC is chaired by the Secretary of the Treasury, and also includes the Chairperson of the Federal Reserve, the OCC, the Director of the Consumer Financial Protection Bureau (“CFPB”), the Chairperson of the SEC, the Chairperson of the FDIC, the Director of the Federal Housing Finance Agency (“FHFA”), the Chairperson of the National Credit Union Administration (“NCUA”), and an independent member with insurance expertise who is appointed by the President of the United States (“President”) and confirmed by the U.S. Senate (“Senate”) for a six-</p>



year term.

In addition, five nonvoting members serve in an advisory capacity: the Director of the Office of Financial Research (“OFR”) in the U.S. Department of the Treasury (“Treasury Department”), the Director of the Federal Insurance Office (“FIO”) in the Treasury Department, a state insurance commissioner designated by the state insurance commissioners, a state banking supervisor designated by the state banking supervisors, and a state securities commissioner (or officer performing like functions) designated by the state securities commissioners.

FSOC provides comprehensive monitoring of the stability of the U.S. financial system. FSOC is charged with identifying risks to the financial stability of the U.S. financial system, promoting market discipline, and responding to emerging risks to the stability of the U.S. financial system.

Section 813 of Title VIII of the Dodd-Frank Act,<sup>37</sup> requires the CFTC and the SEC to coordinate with the Federal Reserve to jointly develop risk management supervision programs for designated clearing entities, including SIDCOs. Consistent with that provision, the CFTC, the SEC and the Federal Reserve issued a report in July 2011 that included recommendations that help, with respect to systemically important clearing entities, to achieve the statutory goals of improving consistency in the SEC’s and CFTC’s oversight programs, promoting robust risk management, promoting robust risk management oversight, and improving the ability of regulators to monitor the potential effects of such risk management on the stability of the U.S. financial system.

The CFTC and SEC formed a Joint Advisory Committee on Emerging Regulatory Issues in 2010. Through its duration, the Committee focused its attention on the flash crash of May 2010. The Committee, jointly chaired by the Chairmen of the SEC and CFTC, provided recommendations to the Commissions in February 2011.

Staff also works through various established intergovernmental partnerships to share information and to consult on issues of importance both to the CFTC and to other regulators. Meetings are typically held among the CFTC, SEC, Treasury Department, Federal Reserve, the New York Federal Reserve Bank, Department of Energy, U.S. Department of Agriculture (“USDA”), Federal Trade Commission (“FTC”) and FERC. . Meetings to discuss implementation of the Volcker rule are held among the CFTC, SEC, Federal Reserve, FDIC and OCC. Other meetings are event driven.

The working relationships with federal law enforcement entities are also fundamental to an effective law enforcement effort. The CFTC coordinates its enforcement efforts with

---

<sup>37</sup> 12 U.S.C. 5472.



agencies such as the U.S. Department of Justice ("DOJ"), the Federal Bureau of Investigation, Federal Trade Commission ("FTC"), SEC, the U.S. Postal Inspection Service and FERC. Enforcement efforts are coordinated with state authorities as well, including state commissions responsible for the regulation of corporations, securities, insurance and banking.

The CFTC also is represented on several interagency task forces designed to keep participants abreast of new developments in financial crimes and to coordinate the government's response. In this area, the CFTC participates in the Money Laundering Working Group ("MLWG"), a forum for discussing money laundering issues among relevant U.S. governmental agencies, chaired by the Treasury Department and DOJ and attended by U.S. banking, securities and futures regulators and state and Federal law enforcement agencies. Through the MLWG, the CFTC also lends advice to the Treasury Department's Financial Crimes Enforcement Network ("FinCEN") regarding the work undertaken by the Financial Action Task Force ("FATF"), an international organization created to formulate recommendations for combating money laundering.

Section 12(g) of the CEA requires the CFTC to cooperate with the Office of the U.S. Trade Representative, Treasury Department, U.S. Department of Commerce, and U.S. Department of State to remove any trade barriers that may be imposed by a foreign nation on the international use of electronic trading systems.

Cooperation with other government agencies is also mandated by the CEA. See response to Principle 2, Question 2.

<b>Principle 2      The Regulator should be operationally independent and accountable in the exercise of its powers and functions</b>	
<b>Key Questions</b>	
<i>Independence</i>	
1.	Does the securities regulator have the ability to operate on a day-to-day basis without:
(a)	External political interference?
	Yes. The 1974 Act established the CFTC as an independent regulatory commission of the U.S. government (i.e., the CFTC does not operate as a division of any Executive Branch department or other agency). Also, as noted below in response to Principle 2, Question 5, the CEA mandates that no more than three CFTC Commissioners may be members of the same political party. However, the CFTC is accountable to, and subject to the oversight of, the Congress.
(b)	Interference from commercial or other sectoral interests?
	Yes. As set forth below in response to Principle 2, Question 7, interested parties may comment on various CFTC rulemaking proposals, proposed guidance and proposed orders. In this manner, persons that may be affected by Commission action may provide input and voice any concerns. It is the Commission's practice to place <i>ex parte</i> communications in informal rulemakings into the public record. Specifically, oral comments addressed to the merits of the rule proposal and made privately to members of the Commission or staff are summarized and placed in the public comment file; similarly, written communications addressed to the merits of the rule proposal are also placed in the comment file.
2.	Where particular matters of regulatory policy require consultation with, or even approval by, a government minister or other authority:
(a)	Is the consultation process established by law?
	<p>Yes. See response to Principle 1, Question 2(a), with respect to consultation required by the Dodd-Frank Act between the Commission, the SEC and the Federal Reserve regarding coordination in the implementation of Title VII of the Dodd-Frank Act, and between the Commission, the SEC and the Federal banking agencies regarding coordination in the implementation of the Volcker rule.</p> <p>Section 2(a)(9)(B)(ii) of the CEA requires the CFTC to deliver a copy of any application by a board of trade for designation or registration as a DCM to trade futures based on any security issued or guaranteed by the U.S. or any agency thereof to the Treasury Department and the Federal Reserve.</p> <p>Section 2(a)(9)(B)(ii) of the CEA prohibits the CFTC from designating or registering a board of trade as a DCM in U.S. government issued or guaranteed securities until forty-five days after the CFTC provides a copy of the application to the Treasury Department and the Federal Reserve or until the CFTC receives comments from those agencies, whichever period is shorter. This section requires the CFTC to take into account any comments received from those agencies, not only in designation decisions but also in refusing, suspending or revoking the designation of a contract market trading futures contracts</p>

based on U.S. government issued or guaranteed securities.

Security futures products may be traded either on a national securities exchange, national securities association, or DCM (collectively, “Exchanges”); however, in each case, the entity must become registered with both the CFTC and SEC. This additional registration for a national securities exchange or national securities association is accomplished through an immediately effective notice filing pursuant to CFTC Regulation 41.31.<sup>38</sup> Comparatively, a DCM would submit its notice registration with the SEC pursuant to section 6(g) of the Securities Exchange Act. Thus, an entity that lists security futures for trading must be registered with the SEC as a national securities exchange or national securities association *and* be designated by the CFTC as a DCM. In addition, exchanges trading security futures are required to file with the SEC and the CFTC proposed rule changes relating to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, decimal pricing, sales practices for security futures products or rules effectuating such SRO’s obligation to enforce the securities laws. A DCM that is “notice-registered” with the SEC would submit most proposed rule changes to the SEC pursuant to section 19(b)(7) of the Securities Exchange Act while at the same time filing with the CFTC under Regulation 41.24 (rule amendments), and/or Regulation 41.23 (listing of new security futures products). Alternatively, a national securities exchange or national securities association that is “notice-registered” with the CFTC would submit proposed rule changes with the SEC pursuant to section 19(b)(1) of the Securities Exchange Act and concurrently provide a notice filing with the CFTC under Regulation 41.32.

A clearing agency that is associated with a DCM for security futures and that would be required to register as a clearing agency under Section 17A(b)(1) of the Securities Exchange Act only because it performs clearing functions for security futures products is exempt from registration as a clearing agency under the Securities Exchange Act. However, DCOs regulated by the CFTC through their association with DCMs for security futures products (other than cash-settled contracts) that are national securities exchanges for trading of security futures products must have arrangements in place with a registered clearing agency to effect payment and delivery of the securities underlying the security futures product. Further, any clearing agency for security futures products must develop linkages with all other clearing agencies for security futures products to permit the product to be purchased on one market and offset on another. SEC-registered clearing agencies are exempted from registration by the CFTC as DCOs.

Section 712 of the Dodd-Frank Act requires the CFTC to consult and coordinate, to the

<sup>38</sup> A national securities exchange, national securities association or alternative trading system subject to Regulation ATS under the Securities Exchange Act that only lists and trades security futures products may be designated as a contract market in security futures pursuant to Section 5f of the CEA by filing a notice with the CFTC.

extent possible, with the SEC and the U.S. prudential regulators “[b]efore commencing any rulemaking or issuing an order regarding swaps, swap dealers, major swap participants, swap data repositories, derivative clearing organizations with regard to swaps, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities.”

In addition, under Section 805 of Title VIII of the Dodd-Frank Act,<sup>39</sup> the CFTC may prescribe regulations, in consultation with the FSOC and the Federal Reserve, containing risk management standards, taking into consideration relevant international standards and existing prudential requirements, for SIDCOs, governing the operations related to payment, clearing, and settlement activities of such designated DCOs. The CFTC is also a signatory to an MOU relating to the confidentiality and use of non-public information obtained from or shared among the parties in connection with or related to the functions and activities of the FSOC or the OFR pursuant to the Dodd-Frank Act.<sup>40</sup> In addition and in accordance with Title VIII of the Dodd-Frank Act, the CFTC consults with the Federal Reserve on the supervision of SIDCOs as well as with respect to any proposed changes to a SIDCO’s rules, procedures or operations that could materially affect the nature or level of risks presented by the SIDCO.<sup>41</sup>

Section 2(a)(1)(D)(iv) of the CEA authorizes the Commission to conduct periodic or special examinations of FCMs, IBs, floor brokers and floor traders engaging in security futures transactions. However, Section 2(a)(1)(D)(iv) of the CEA requires that the CFTC provide the SEC with notice of such examinations for the purpose of assessing the feasibility and desirability of coordinating efforts.

Pursuant to a 2008 MOU between the CFTC and SEC regarding Coordination in Areas of Common Regulatory Interest (dated March 11, 2008), the agencies in connection with the review of “novel” derivative products have agreed to: (i) recognize their mutual regulatory interests and encourage innovation, competition, and legal certainty; (ii) share information relating to novel derivative products and act on any related requests in a timely manner; (iii) permit the trading of novel derivative products (for products that implicate overlapping areas of regulatory concern) in either or both a CFTC- or SEC-regulated environment in a manner consistent with each agency’s

<sup>39</sup> 12 U.S.C. 5464(a)(2)(A).

<sup>40</sup> Signatories to this MOU include the FSOC, Treasury Department, Federal Reserve, OCC, CFPB, SEC, FDIC, FHFA, NCUA, OFR, FIO, the independent member appointed by the President having insurance expertise on the FSOC, the designated State insurance commissioner, the designated State banking supervisor, and the designated State securities commissioner.

<sup>41</sup> For example, pursuant to Section 806(e) of Title VIII of the Dodd-Frank Act, 12 U.S.C. 5465(e)(1)(A) and CFTC Regulation 40.10, a SIDCO must provide notice 60-day advance notice to the CFTC and Federal Reserve of any proposed change to its rules, procedures or operations that could materially affect the nature or level of risks presented by the SIDCO. In addition, under Section 806(e)(4), before taking any action on, or completing its review of, a material rule change proposed by a SIDCO, the CFTC must consult with the Federal Reserve.

regulatory structure; and (iv) meet on a quarterly basis to discuss particular regulatory matters and novel derivative products.

In connection with the establishment of centralized clearing for credit default swaps ("CDS"), the Federal Reserve, CFTC and SEC entered into an MOU on November 14, 2008. The MOU establishes a framework for consultation and information sharing on issues related to CDS central counterparties and reflects the agencies' intent to cooperate, coordinate and share information.

The FERC and CFTC signed two MOUs mandated by the Dodd-Frank Act to address circumstances of overlapping jurisdiction and to share information in connection with market surveillance and investigations into potential market manipulation, fraud or abuse. The CFTC and FERC have overlapping jurisdiction over energy commodities, but the CFTC has exclusive jurisdiction over swaps and futures transactions.

In 2007, Congress also directed the FTC to adopt an anti-manipulation rule for the physical, wholesale, crude oil, gasoline and other petroleum distillates markets as part of the Energy Independence and Security Act of 2007.<sup>42</sup>

In addition to its exclusive jurisdiction over futures trading on regulated exchanges, the CFTC also has anti-manipulation authority over cash markets as set forth in Section 9(a)(2) of the CEA. As a result, the CFTC and FTC each have concurrent jurisdiction over the underlying cash markets while the CFTC retains its exclusive jurisdiction over futures trading set forth in Section 2(a)(1)(A) of the CEA. It is expected that the agencies will closely coordinate efforts to efficiently deter and prosecute illegal activity in cash markets consistent with each agencies' statutory mandate.

CFTC staff works with staff of other U.S. agencies on an as-needed basis and regularly comments, including informally, on various financial regulation and financial stability initiatives of the Treasury Department and fellow financial regulators.

Federal agencies also must comply with certain general rulemaking requirements such as the Regulatory Flexibility Act<sup>43</sup> (that requires agencies to take into account the impact of proposed rules on small businesses), the Paperwork Reduction Act ("PRA")<sup>44</sup> (that requires agencies to review rules to evaluate the information collection burden such rules would

<sup>42</sup> The FTC finalized its anti-manipulation rule in 2009. See *Prohibitions on Market Manipulation*, 74 FR 40686 (Aug. 2, 2009) (adding new Part 317 to FTC regulations). Similar to the anti-fraud rule found under Section 10(b) of the Securities Exchange Act (Rule 10b-5), the FTC proposal prohibits fraudulent and deceptive practices which may include "intentional acts that obstruct or impair wholesale petroleum markets." Proof that fraudulent or deceptive conduct actually had an effect on the market is not required under the FTC rule.

<sup>43</sup> 5 U.S.C. 601 *et seq.*

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

impose on the public), and the Congressional Review of Agency Rulemaking Act ("CRARA") <sup>45</sup> (which requires agencies to submit rules to Congress and the General Accounting Office ("GAO") with a report that includes a cost-benefit analysis).
(b) Do the circumstances, in which consultation is required, exclude decision making on day-to-day technical matters?
Yes. Consultation with other appropriate Federal agencies and bodies, as described in responses to Principle 1, Questions 2(a) - (d), is narrowly-tailored to specific issues of concurrent or shared jurisdiction.
(c) Are the circumstances in which such consultation or approval is required or permitted clear and the process sufficiently transparent, or the failure to observe procedures and the regulatory decision or outcome subject to sufficient review, to safeguard its integrity?
<p>Yes. See responses to Principle 1, Questions 2(a) – (d) and Principle 2, Questions 2(a) and 6(a). For example, Section 712(c) of the Dodd-Frank Act provides that the Commission or the SEC may object to, and obtain judicial review of, a rule, regulation or order that does not conform to the statutory delimitation of jurisdiction between the Commission and the SEC with respect to swaps and security-based swaps. Regarding the PRA and Regulatory Flexibility Act, Federal agencies submit certain filings to the Office of Management and Budget ("OMB") (regarding the PRA) and to the General Services Administration (regarding the Regulatory Flexibility Act) that essentially document compliance with the requirements of those statutes. Before an agency rule can take effect, the CRARA requires Federal agencies to submit to each House of Congress and to the Comptroller General of the United States ("Comptroller General") a report containing a copy of the rule, a concise statement relating to the rule (including a cost-benefit analysis, including whether it is a major rule), and the proposed effective date. A "non-major" rule becomes effective as proposed by an agency if Congress and the GAO receive the required report. A "major" rule will generally become effective 60 days after Congressional receipt of an agency's report.</p> <p>As noted above, the regulatory decisions and outcomes of the CFTC are subject to judicial review in the Federal courts.</p> <p><i>See also</i> response to Principle 2, Question 6(a).</p>

<sup>45</sup> 5 U.S.C. 804(2).

3.	Does the securities regulator have a stable and continuous source of funding sufficient to meet its regulatory and operational needs?
	<p>Section 2(a)(10)(A) of the CEA requires that whenever the CFTC submits any budget request to the President of the United States or OMB (the agency within the office of the President which analyses and makes recommendations to the President on budget matters), the CFTC must concurrently transmit copies of the request to the House and Senate Appropriations Committees and the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition and Forestry. The CFTC's initial budget request may be revised during its consideration by OMB and then, after submission to Congress, by the appropriate House and Senate committees (which may hold hearings, request additional testimony by CFTC Commissioners or staff, or request additional documentation). The vehicle to authorize the CFTC's budget funds is through the adoption by the Congress of a specific bill authorizing and funding the CFTC's operations (as part of the President's budget).</p> <p>Determinations regarding the sufficiency of the CFTC's requested resources are made by the Congress during its consideration of the CFTC's formal budget request. Information regarding specific needs of the CFTC is communicated by the formal budget document and related written submissions, direct testimony by the Chairman and/or CFTC Commissioners to Congress, and by CFTC and Congressional staff communications and meetings.</p> <p><i>See also</i> responses to Principle 3, Question 2.</p>
4.	Are the regulatory authority, the head and members of the governing body of the regulatory authority, as well as its staff, accorded adequate legal protection for the <i>bona fide</i> discharge of their governmental, regulatory and administrative functions and powers?
	<p>Yes. The Federal Employees Liability Reform and Tort Compensation Act of 1988<sup>46</sup> provides Federal employees with immunity from individual liability for torts committed in the scope of their employment. In order to insulate CFTC staff from individual liability for possible violation of constitutional or statutory duties that are not shielded by the Federal Liability Reform and Tort Compensation Act of 1988, the CFTC has adopted indemnification rules.<sup>47</sup></p>
5.	Are the head and governing board of the regulator subject to mechanisms intended to protect independence, such as: procedures for appointment; terms of office; and criteria for removal?
	<p>Yes. Section 2(a)(2)(A) of the CEA provides that each of the five Commissioners of the CFTC are to be appointed by the President, by and with the advice and consent of the Senate. Each CFTC Commissioner holds office for a term of five years. The terms of the Commissioners are staggered due to the CEA's initial requirement that the first Commissioners' terms were to expire one, two, three, four and five years from the date the</p>

<sup>46</sup> 28 U.S.C. 2671.

<sup>47</sup> CFTC Regulation Part 142.



	<p>CFTC began operations on April 21, 1975. Not more than three Commissioners may be members of the same political party.</p> <p>The President appoints, with the advice and consent of the Senate, a member of the CFTC as Chairman, who serves as Chairman at the pleasure of the President. The President may appoint at any time, with the advice and consent of the Senate, a different Chairman, and the CFTC Commissioner previously appointed as Chairman may complete his or her term as a CFTC Commissioner.</p>
	<i>Accountability</i>
6.	With reference to the system of accountability for the regulator's use of its powers and resources:
	(a) Is the regulator accountable to the legislature or another government body on an ongoing basis?
	<p>Yes. The CFTC is accountable for its conduct to Congress. The House Committee on Agriculture and its Subcommittee on Risk Management and Specialty Crops, and the Senate Agriculture, Nutrition and Forestry Committee and its Subcommittee on Research, Nutrition and General Legislation have the principal responsibility for oversight of the CFTC. In general, these Committees handle, in the first instance, the reauthorization, budget and funding decisions for the CFTC, as well as bills affecting the CEA.</p> <p>Section 8(i) of the CEA requires the Comptroller General to conduct reviews and audits of the CFTC and make reports thereon. Section 8(i) of the CEA directs the CFTC to make available to the Comptroller General (generally through its OMB) any information regarding the powers, duties, organization, transactions, operations and activities of the CFTC, as well as access to any books and records (subject to confidentiality requirements), as the Comptroller General may require.</p>
	(b) Is the regulator required to be transparent in its way of operating and use of resources and to make public its actions that affect users of the market and regulated entities, excluding confidential or commercially sensitive information?
	<p>Yes. Section 8(h) of the CEA requires the CFTC to submit to Congress a written report within 120 days after the end of each fiscal year detailing the operations of the CFTC during that fiscal year. The CFTC is required to include in this annual report such information, data and legislative recommendations as it deems advisable with respect to the administration of the CEA and its powers and functions under the CEA. Section 18(b) of the CEA requires that the annual report contain plans and findings regarding implementation of Section 18(a) of the CEA, which mandates certain research and information programs.</p>
	(c) Is the regulator's receipt and use of funds subject to review or audit?
	<p>Yes. Externally, the CFTC's budget and available resources are subject to oversight by the Congress through the exercise of its authorization and funding procedures. Additionally, the Comptroller General periodically audits the CFTC.</p> <p>Internally, the CFTC Office of the Executive Director and the Office of Financial Management oversee the use of resources provided to the CFTC by Congress and report</p>



	<p>directly to the Office of the Chairman. In particular, the Office of Financial Management manages the CFTC's financial and budget programs by coordinating development of the CFTC's strategic plan, annual performance plan and annual performance report; formulates and executes the CFTC's budget; provides contracting and purchasing of services; ensures proper use of, and accounting for, agency resources; and manages the CFTC's travel services.</p> <p>In addition, the operations of the CFTC are subject to ongoing review by an independent Office of the Inspector General ("OIG") with offices in the CFTC headquarters. OIG was established in April 1989 and conducts and supervises audits and investigations of programs and operations of the CFTC and reviews existing and proposed legislation and regulations. OIG recommends policies to promote economy, efficiency and effectiveness in CFTC programs and operations, and to prevent and detect fraud and abuse. OIG keeps the Chairman of the CFTC and Congress informed about any problems, deficiencies, and progress of corrective action in programs and operations. For more information about the OIG, see: <a href="http://www.cftc.gov/About/OfficeoftheInspectorGeneral/index.htm">http://www.cftc.gov/About/OfficeoftheInspectorGeneral/index.htm</a></p>
7.	<p>Are there means for natural or legal persons adversely affected by a regulator's decisions or exercise of administrative authority ultimately to seek review in a court, specifically:</p>
	<p>(a) Does the regulator have to provide written reasons for its material decisions?</p>
	<p>Yes. CFTC rulemaking must comply with the procedural requirements of the APA, which are intended to provide public notice and opportunity for public comment in the rulemaking. The APA specifically requires Federal administrative agencies such as the CFTC to publish a Notice of Proposed Rulemaking in the <i>Federal Register</i> and to provide interested persons an opportunity to participate in the rulemaking through submission of written data, views or arguments with or without an opportunity for oral presentations. The APA requires agencies to incorporate a concise general statement of their basis and purpose in the rules adopted.</p>
	<p>(b) Does the decision-making process for such decisions include sufficient procedural protections to be meaningful?</p>
	<p>Yes. See response to Principle 2, Question 7(a).</p> <p>Part 147 of the CFTC's regulations implements the open meetings requirement of the Government in the Sunshine Act ("Sunshine Act"), 5 U.S.C. 552b, which mandates the conditions under which CFTC Commissioners must conduct open meetings. As stated in CFTC Regulation 147.1(b), "among the primary purposes of these rules is the CFTC's desire to inform the public to the fullest extent possible of its activities as an aid to its properly carrying out its responsibility for administering and enforcing the CEA . . ."</p> <p>The CFTC has also adopted regulations that provide objective due process procedures to ensure that various aspects of its programs are conducted with fairness and impartiality. See response to Principle 5, Question 1.</p> <p>As previously noted (see response to Principle 2, Question 2(a) and 7(a)), Federal agencies such as the CFTC also must comply with certain general rulemaking requirements (e.g., the</p>

	Regulatory Flexibility Act that requires agencies to take into account the impact of proposed rules on small businesses, and the PRA that requires agencies to review rules to evaluate the information collection burden such rules would impose on the public) and its decisions are subject to review in a court.
(c)	Are affected persons permitted to make representations prior to such a decision being taken by a regulator in appropriate cases?
	Yes. See response to Principle 4, Question 2(c).
(d)	Are all such decisions taken by the regulator subject to a sufficient, independent review process, ultimately including judicial review?
	Yes. Aggrieved parties may challenge agency actions under the APA in U.S. Federal District Court. See 5 U.S.C. 702.
8.	Where accountability is through the government or some other external agency is confidential and commercially sensitive information subject to appropriate safeguards to prevent inappropriate use or disclosure?
	<p>Yes.</p> <p><b>Safeguards against Inappropriate Use of Information.</b> Section 2(a)(8) of the CEA prohibits any CFTC Commissioner or employee of the CFTC from accepting employment or compensation from any person, exchange, or clearinghouse subject to regulation by the CFTC and from participating, directly or indirectly, in any contract market operations or transactions of a character subject to CFTC regulation.</p> <p>Section 9(c) of the CEA makes it a felony punishable by a fine of not more than \$500,000 or imprisonment for up to 5 years, or both, for a CFTC employee or CFTC Commissioner to trade commodity futures and options or to participate directly or indirectly in any investment transaction in an actual commodity if nonpublic information is used in the transaction or if prohibited by CFTC regulations. CFTC Regulation 140.735-2 provides, subject to very limited exceptions, that no member or employee of the CFTC may participate directly or indirectly in any transaction involving commodity futures and commodity options, among other things. Section 9(d) of the CEA similarly makes it a punishable felony for a CFTC employee or CFTC Commissioner to pass on or otherwise benefit from information such employee or Commissioner receives in the course of employment which may affect or tend to affect the price of commodities.</p> <p>As a matter of practice, DOE seeks to place restrictions on the use and disclosure of confidential information in litigation through the use of protective orders and non-disclosure agreements in investigations.</p> <p>Regarding insider trading, Section 746 of the Dodd-Frank Act amended Section 4c(a) of the CEA by adding a new section (3) as follows:</p> <p>(3) CONTRACT OF SALE.—It shall be unlawful for any employee or agent of any department or agency of the Federal Government who, by virtue of the</p>

employment or position of the employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to use the information in his personal capacity and for personal gain to enter into, or offer to enter into (A) a contract of sale of a commodity for future delivery (or option on such a contract); (B) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the [Securities Exchange Act]; or (C) a swap.

**Safeguards Against Inappropriate Disclosure of Information.** Section 8(a)(1) of the CEA provides that, except as otherwise specified in the CEA, the CFTC may not publish data and information that would separately disclose market position, business transactions, trade secrets or names of customers (*i.e.*, “Section 8 Material”), and the CFTC may withhold from public disclosure any data or information concerning or obtained in connection with any pending investigation of any person. Section 8(a)(1) of the CEA also furnishes protection from compelled disclosure for confidential information received from foreign futures authorities. The effect of this provision is to protect the disclosure of confidential information provided to the CFTC under an MOU in response to a request under the Freedom of Information Act (“FOIA”) or third party subpoena. As noted above, DOE seeks to place restrictions on the use and disclosure of confidential information in litigation through the use of protective orders and non-disclosure agreements in investigations.

CFTC Regulation 145.5 provides that the CFTC may decline to publish or make available to the public any “non-public” records as defined in Regulation 145.5(a)-(i). Generally, this type of information concerns trade secrets, national defense or foreign policy concerns, personal privacy, various financial statement forms and pending investigations. In addition, Regulation 145.9 outlines the procedures by which a person submitting information to the CFTC may request confidential treatment of that information.

Part 146 of the CFTC’s regulations implement the Privacy Act of 1974 (“Privacy Act”), 5 U.S.C. 552a, which provides protections for information concerning an individual. Among the primary purposes of these rules are to enable individuals to determine whether information about them is contained in government files and, if so, to obtain access to that information; to establish procedures whereby individuals may have inaccurate and incomplete information corrected; and to restrict access by unauthorized persons to that information.

**Sanctions.** Section 9(f)(1) of the CEA makes it a felony for any person who is an employee, member of the governing board, or member of any committee of a board of trade,

contract market or registered futures association, in violation of a regulation issued by the CFTC, willfully and knowingly to trade for such person's own account, or for or on behalf of any other account in futures contracts or options thereon, on the basis of, or willingly and knowingly to disclose for any purpose inconsistent with the performance of such person's official duties, any material nonpublic information obtained through special access related to the performance of duties. Violations are punishable by a fine of up to \$500,000 in the case of an individual plus the amount of any gains realized from such trading or disclosures and/or prison of up to five years.

Section 9(a)(5) of the CEA makes it a felony, punishable by a fine of up to \$500,000 in the case of an individual and/or prison of up to five years, for any person willfully to violate any other provision of the CEA, or any rule or regulation thereunder.

**Permissible Disclosures.** The CEA specifies the circumstances for the permissible disclosure of information. CEA Section 8(a) also contains a provision that explicitly sets forth certain permissible disclosures of "Section 8 Material." This provision includes reference to confidential information received from a foreign futures authority. This explicit list is necessary because, under the CEA, Section 8 Material may not be disclosed by the CFTC "except as otherwise specifically authorized in this Act." *See also* Section 8(e) of the CEA for exceptions to the prohibition against disclosure of Section 8 Material.

<b>Principle 3</b>	<b>The Regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.</b>
<b>Key Questions</b>	
1.	<p>Are the powers and authorities of the regulator sufficient, taking into account the nature of a jurisdiction's markets and a full assessment of these Principles to meet the responsibilities of the regulator(s) to which they are assigned?</p> <p>Yes. The mission of the CFTC is to protect market users and the public from fraud, manipulation, other abusive practices, and systemic risk, related to derivatives that are subject to the CEA and to foster open, transparent, competitive and financially sound markets.<sup>48</sup></p> <p><b>Surveillance.</b> The CFTC has the power to conduct direct surveillance of those markets and financial institutions that fall within its regulatory jurisdiction.<sup>49</sup> Significantly, the Dodd-Frank Act gave the Commission new regulatory authorities over SDs, MSPs, DCMs, DCOs, SEFs and SDRs. The CFTC also can obtain certain information on unregulated affiliates of FCMs or affiliates of FCMs subject to regulation by other authorities such as the SEC, the banking regulators, and the relevant foreign authorities.<sup>50</sup> In addition, the CFTC has the power to obtain information regarding regulated markets, institutions, financial products, customers and parties to transactions.<sup>51</sup> Further, the CFTC has the power to review books and records of persons holding reportable positions in futures and swaps, including all cash and spot transactions in and inventories of, and purchase and sale commitments of the commodities underlying reportable positions.<sup>52</sup></p> <p>Section 8a(6) of the CEA authorizes the CFTC to communicate to the proper committee or officer of any DCM, registered futures association ("RFA"), or self-regulatory organization ("SRO") as defined in Section 3(a)(26) of the 1934 Act, notwithstanding Section 8 of the CEA, the full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgment of the CFTC disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers or investors, which is necessary to effectuate the purposes of the CEA. Section 8a(6) of the CEA further provides that any information so provided must not be disclosed except in a self-regulatory proceeding or action.<sup>53</sup></p>

<sup>48</sup> See Section 3(b) of the CEA.

<sup>49</sup> See CEA Sections 4(a), 4(b), 4d, 4e, 4m, 4s, 5b, 5h, 8a(5) and 21.

<sup>50</sup> See CEA Section 4f(c), 8(a)(1) and 8(a)(2).

<sup>51</sup> See CEA Sections 4g and 4n.

<sup>52</sup> See Sections 4i and 4t of the CEA.

<sup>53</sup> See also CFTC Regulation 140.72 (delegating such authority to certain Staff).

**Enforcement.** The CFTC has the power to conduct investigations<sup>54</sup> and sanction violations of the CEA. Administrative sanctions may include orders suspending, denying, revoking, or restricting registration and exchange trading privileges and imposing civil monetary penalties and orders of restitution (CEA Section 6(c)) as well as cease and desist orders (CEA Section 6(d)). The CFTC may also obtain temporary restraining orders and preliminary and permanent injunctions in Federal court for CEA violations, as well as impose civil monetary penalties (CEA Section 6c). Other relief may include appointment of a receiver, freeze assets, restitution and disgorgement of unlawfully acquired benefits.

The CEA also provides that the CFTC may obtain certain temporary relief on an *ex parte* basis (that is, without notice to the other party) including restraining orders preserving books and records, freezing assets and appointing a receiver.<sup>55</sup> When those enjoined violate court orders, the CFTC may seek to have the offenders held in contempt.

The CFTC has the power to direct “registered entities”<sup>56</sup> to alter or supplement their rules and to take such action as it deems to be necessary to maintain or restore orderly trading. See Sections 8a(7) and (9) of the CEA. Section 5e of the CEA authorizes the CFTC to suspend or revoke the designation of a contract market, SEF or DCO based on a failure or refusal to comply with any of the provisions of the CEA, CFTC regulations or CFTC orders.

Section 12(a) of the CEA provides that the CFTC “may cooperate with any Department or agency of the government, any state, territory, district, or possession, or department, agency, or political subdivision thereof, any foreign futures authority, any department or agency of a foreign government or political subdivision thereof, or any person.”

After the recent financial crisis, the Dodd-Frank Act modernized consumer and investor protection requirements and expanded those requirements to previously unregulated areas. Section 753 of the Dodd-Frank Act also significantly enhanced the Commission’s enforcement anti manipulation authority. For example, Section 6(c)(1) prohibits the use of any “manipulative or deceptive device or contrivance” in connection with any swap or contract of sale of any commodity in interstate commerce of for future deliver on or subject to the rules of any registered entity and includes a special provision for manipulation by false or misleading or inaccurate reporting. See also Regulation 180.1(a). These provisions lessened the intent requirement to prohibit “the reckless use of fraud-

---

<sup>54</sup> See CEA Section 8(a)(1).

<sup>55</sup> See CEA Section 6c.

<sup>56</sup> The term “registered entity” is defined in Section 1a(40) of the CEA to mean (i) a board of trade designated as a contract market under Section 5; (ii) a DCO registered under Section 5b; (iii) a board of trade designated as a contract market under Section 5f; (iv) a SEF registered under Section 5h; (v) an SDR registered under Section 21; and (vi) with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded.

based manipulative schemes.”

The Dodd-Frank Act also expanded the CFTC's authority to bring new types of enforcement actions alleging false statements to the CFTC. Section 6(c)(2) makes it unlawful to make any false or misleading statement of a material fact to the Commission in any form relating to a future, swap or commodity in interstate commerce. Section 6(c)(3) prohibits any person from directly or indirectly manipulating or attempting to manipulate the price of any product regulated by the Commission.

In Section 747 of the Dodd-Frank Act, Congress amended the CEA to expressly prohibit certain trading practices that it determined were disruptive of fair and equitable trading. Dodd-Frank section 747 amends Section 4c(a) of the CEA making it unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that:

- violates bids or offers;
- demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or
- is of the character of, or is commonly known to the trade as, “spoofing” (bidding or offering with the intent to cancel the bid or offer before execution).

The Dodd-Frank Act also established structural mechanisms to ensure that gaps are addressed as soon as new products are developed. The Dodd-Frank Act removed previous exemptions from regulation related to: (1) transactions in excluded commodities between ECPs and not executed or traded on a trading facility; (2) principal-to-principal transactions in excluded commodities between certain ECPs and executed or traded on an electronic trading facility; (3) transactions subject to individual negotiation between ECPs in commodities other than agricultural commodities and not executed or traded on a trading facility; (4) transactions in exempt commodities between ECPs and not entered into on a trading facility; (5) principal-to principal transactions in exempt commodities between eligible commercial entities and executed or traded on an electronic trading facility; and (6) transactions in commodities, among other things, having a nearly inexhaustible deliverable supply or no cash market, between ECPs and traded on an exempt board of trade.

Additionally, the Dodd-Frank Act includes detailed Core Principles for DCOs to enhance the CEA regulatory regime for central counterparties. It also authorized the CFTC to prescribe regulations, in consultation with FSOC and the Federal Reserve, containing risk management standards for SIDCOs, taking into consideration relevant international standards and existing prudential requirements.

In order to provide greater transparency to the swap market and permit regulators to properly assess the market and its participants, Section 728 of the Dodd-Frank Act established SDRs for the purpose of collecting and maintaining data and information

related to swap transactions. SDRs are required to register<sup>57</sup> with the CFTC and make such data and information directly and electronically available to the CFTC and other regulators.<sup>58</sup> In addition, the Dodd-Frank Act also required in Section 727 that swap transaction data be publicly available and disseminated to the marketplace. The CFTC adopted Part 43 to its regulations to implement these Congressional requirements.<sup>59</sup>

To implement Section 737 of the Dodd-Frank Act, the CFTC recently reissued a notice of proposed rulemaking to establish limits on speculative positions in 28 selected physical commodity futures contracts traded pursuant to the rules of a DCM as well as swaps that are “economically equivalent” to those contracts.<sup>60</sup> The proposed rulemaking would enable the CFTC to meet its statutory responsibility to set such limits in order to prevent excessive speculation and manipulation while ensuring sufficient market liquidity for bona fide hedgers and protecting the price discovery process.

Foreign boards of trade (“FBOTs”) that wish to permit identified members and other participants located in the U.S. with direct access to their electronic trading and order matching system must apply for and receive an order of registration pursuant to the procedures set forth in Part 48 of the Commission’s regulations.

2. With regards to funding:

(a) Is the regulator's funding adequate to permit it to fulfil its responsibilities, taking into account the size, complexity and types of functions subject to its regulation, supervision or oversight?

Determinations regarding the sufficiency of the CFTC’s requested resources are made by the Congress during its consideration of the President’s budget request with input from the CFTC’s formal budget request. Information regarding specific needs of the CFTC is communicated by the formal budget document and related written submissions, direct testimony by the Chairman and/or CFTC Commissioners to Congress and by CFTC and Congressional staff communications and meetings.

The CFTC currently employs roughly 667 career staff. For FY2014, the CFTC received a modest budgetary increase to \$215 million, up from a sequestration level of \$195 million that posed significant challenges for the agency’s orderly operation. The President’s FY2015 budget recommended \$280 million for the CFTC for FY2015, an increase of \$65 million and 253 staff persons over the FY2014 levels. The President’s FY2015 budget would enable the CFTC to expand examinations, surveillance and technology functions.

<sup>57</sup> *Swap Data Repositories: Registration Standards, Duties and Core Principles*, 76 FR 54538, 54544 (Sept. 1, 2011).

<sup>58</sup> *Swap Data Recordkeeping and Reporting Requirements*, 77 FR 2136 (Jan. 13, 2012).

<sup>59</sup> *Real-Time Public Reporting of Swap Transaction Data*, 77 F.R. 1182 (Jan. 9, 2012).

<sup>60</sup> See Section 4a(a) of the CEA.



	<p>The House Appropriations Committee released the FY2015 Agriculture Appropriations Bill with a budget of \$218 million for the CFTC, an increase of \$3 million over the 2014 enacted level, \$62 million below the President's request. The Bill requires over \$52 million be for the purchase of information technology until September 30, 2016.</p> <p><i>See also</i> response to Principle 2, Question 3.</p>
	<p>(b) Can the regulator affect the operational allocation of resources once funded?</p>
	<p>An allocation request is submitted by the CFTC to Congress. The request contains a specific breakdown of resource allocation within the CFTC. The final allocation may be revised as part of discussions between the Congress and the CFTC. The final allocation is established when the Congress adopts the bill funding the CFTC's operations.</p>
3.	<p>Does the level of resources recognize the difficulty of attracting and retaining experienced and skilled staff?</p>
	<p>Section 12 of the CEA authorizes the CFTC to employ personnel and obtain necessary technical resources; Section 12(b)(1) of the CEA also authorizes the CFTC to employ such investigators, special experts, Administrative Law Judges, clerks and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated by Congress; Section 12(b)(2) of the CEA authorizes the CFTC to employ experts and consultants; and Section 12(b)(3) of the CEA authorizes the CFTC to make and enter into contracts with respect to all matters which in the judgment of the CFTC are necessary and appropriate to effectuate the purposes of the CEA. Section 2(a)(7) of the CEA permits the CFTC to provide additional compensation and benefits to employees "if the same type of compensation or benefits are provided by any agency referred to in section 1206(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 1833b(a), or could be provided by such an agency under applicable provisions of law (including rules and regulations)." In effect, Section 2(a)(7) of the CEA enables the CFTC to maintain comparative compensation and benefits in relation to other Federal financial regulators for the purpose of retaining and attracting employees.</p> <p>Section 2(a) of the CEA requires the Commission to have a General Counsel and to appoint such other attorneys as may be necessary to assist the General Counsel and perform legal duties and functions as the Commission may direct.</p> <p>As of May 31, 2014, the Commission employed 646 employees that comprise 435 mission critical programmatic staff (attorneys, economists, auditors, risk and trade analysts, and other financial specialists); 163 management and support staff (human resources specialists; IT specialists; management and program professionals; financial staff; strategic planners; logistics staff; and clerical); and 48 executives. <i>See also</i> FY 2013 Agency Financial Report dated December 2013 (<a href="http://www.cftc.gov/About/CFTCReports/index.htm">http://www.cftc.gov/About/CFTCReports/index.htm</a>).</p>
4.	<p>Does the regulator ensure that its staff receives adequate ongoing training?</p>
	<p>Yes. Throughout the year, the Human Resources Branch provides a series of educational/training seminars keyed to the primary mission of the CFTC through its Talent</p>

	<p>Management and Leadership Development Section. The Section employs a full-time Chief Learning Officer to ensure that the training needs of all employees are met. These training seminars are focused on the financial and legal aspects of the futures/options/swaps markets. Technical and computer skills are also provided to employees as needed. In addition, employees may use various on-line, web-based and in-house educational materials to maintain and increase proficiency. Off-site educational seminars provided by third parties (such as continuing legal education) are also made available.</p> <p>The Commission recently announced that it has entered into a multi-year contract to allow all CFTC Federal employees to take technical training related to financial management, financial marketplaces and business skill enhancement.</p>
5.	<p>Does the regulator have policies and governance practices to perform its functions and exercise its powers effectively?</p> <p>Yes. See response to question 1.</p>
6.	<p>Does the regulator play an active role in promoting education in the interest of protecting investors?</p> <p>Yes. The Commission has an Office of Consumer Outreach which supports the Commission by creating and distributing financial education messages to help consumers avoid fraud and deception in the commodities markets.</p> <p>The Commission has a section on its website (<a href="http://www.cftc.gov">www.cftc.gov</a>) devoted to consumer protection. The link is prominently located on the banner of the CFTC home page.</p> <p>The consumer protection section of the website educates consumers about U.S. futures markets; notifies the public about the types of fraud in the marketplace; offers guidance on how to file complaints or send in tips regarding suspicious activities; and provides updates on disciplinary actions.</p>

<b>Principle 4 The Regulator should adopt clear and consistent regulatory processes</b>	
<b>Key Questions</b>	
<i>Clear and Equitable Procedures</i>	
1.	Is the regulator subject to reasonable procedural rules and regulations?
	Yes. The CFTC is subject to the APA. The APA establishes procedures that most Federal agencies, including the CFTC, must follow when they take agency action. <sup>61</sup> The APA also provides the standards of judicial review of final agency action. <sup>62</sup> In addition, the CEA and CFTC regulations also provide various procedural rules in connection with, among other things, investigations and enforcement proceedings, review of exchange disciplinary proceedings and the reparations program. See response to Principle 4, Question 3; response to Principle 2, Question 2(a) (discussing compliance with the Regulatory Flexibility Act, PRA and CRARA). In addition, the CFTC is subject to FOIA, which requires Federal agencies to make public information which is not subject to one or more limited restrictions on disclosure.
2.	Does the regulator:
(a)	Have a process for consultation with the public, or a section of the public, including those who may be affected by the policy, for example, by publishing proposed rules for public comment, circulating exposure drafts or using advisory committees or informal contacts?
	See response to 2(c).
(b)	Publicly disclose and explain its policies, not including enforcement and surveillance policies, in important operational areas, such as through interpretations of regulatory actions, setting of standards, or issuance of opinions stating the reasons for regulatory actions?
	See response to 2(c).
(c)	Publicly disclose changes and reasons for changes in rules or policies?
	Yes, to all of the above. The CFTC typically promulgates rules through “informal” rulemakings under the APA. Informal rulemaking requires that the public be given notice of a proposed rule and the opportunity for public comment. <sup>63</sup> The APA generally requires Federal administrative agencies such as the CFTC to publish a notice of proposed and final rulemaking in the <i>Federal Register</i> and to provide interested persons an opportunity to participate in the rulemaking through submission of written data, views or arguments with or without an opportunity for oral presentations. The Commission’s procedural rules require that whenever the CFTC proposes to issue, amend, or repeal any rule or regulation of general application, that notice of the action be published in the <i>Federal Register</i> . CFTC Regulation 13.3. The CFTC sometimes holds open forums to permit oral communication of views by the public on proposed rules of particular significance.
	CFTC Regulation 140.98 provides, among other things, that each written

<sup>61</sup> The APA is codified at 5 U.S.C. 551 *et seq.*

<sup>62</sup> 5 U.S.C. 702.

<sup>63</sup> 5 U.S.C. 553.

response by the Commission or its staff to a (i) letter requesting interpretive legal advice, (ii) a statement that, on the basis of the facts stated in such letter, the staff would not recommend that the Commission take any enforcement action, or (ii) certain exemption letters, will be made available to the public for inspection and copying except for (1) information provided pursuant to a request for confidential treatment under CFTC Regulation 140.98(b) and (2) Section 8 Material.

As noted, the APA requires an agency to give its rationale and policy purpose in proposing or adopting a rule. In addition, the CFTC generally articulates the rationale for all interpretations, exemptions, orders or policy changes. See response to Principle 4, Question 4(d), regarding the types of communications published by the CFTC that explain the CFTC's program.

The CFTC has from time to time created various advisory committees as a mechanism for public consultation with interested members of the commodities industry and users of the futures markets. Such advisory committees include: (i) an Agricultural Advisory Committee with 25 member organizations representing a major portion of the American agricultural community; (ii) a Global Markets Advisory Committee with 30 members representing futures exchanges, self-regulators, financial intermediaries, traders and market users; (iii) a Technology Advisory Committee with 21 individuals representing electronic markets, electronic communication systems, U.S. futures exchanges, an SRO, financial intermediaries, market users and traders; (iv) a Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues with ten members consisting of prominent market practitioners, academics and former market regulators; and (v) an Energy and Environmental Markets Advisory Committee consisting of 33 members representing industry professionals, futures exchanges, market participants, academics, consumer advocates and environmental organizations. The CFTC also periodically holds informal roundtables and formal public hearings on issues.

(d)	Have regard, in the formulation of policy, to the costs of compliance with regulation?
	Yes. Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its action before issuing a new regulation or certain orders under the CEA. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) requires the Commission to “consider the costs and benefits” of its action in light of five areas of market and public concern: protection of market participants and the public; efficiency, competitiveness and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations.
(e)	Make all rules and regulations available to the public?
	Yes. All CFTC regulations are published in the U.S. Code of Federal Regulations, 17 C.F.R. Part 1 <i>et. seq.</i> and are available at <a href="http://www.gpoaccess.gov">http://www.gpoaccess.gov</a> .
(f)	Make its rulemaking procedures readily available to the public?
	Yes. <i>See</i> response to Principle 4, Question 2(c).
3.	In assessing procedural fairness:
(a)	Are there rules in place for dealing with the regulator that are intended to ensure procedural fairness?
	<p>Yes. CFTC rulemaking must comply with the procedural requirements of the APA, which are intended to provide public notice and opportunity for public comment in the rulemaking. The APA specifically requires Federal administrative agencies such as the CFTC to publish a Notice of Proposed Rulemaking in the <i>Federal Register</i> and to provide interested persons an opportunity to participate in the rulemaking through submission of written data, views or arguments with or without an opportunity for oral presentations.</p> <p>Part 147 of the CFTC’s regulations implements the open meetings requirement of the Sunshine Act. The Sunshine Act mandates the conditions under which CFTC Commissioners must conduct open meetings.<sup>64</sup> As stated in CFTC regulation 147.1(b), “among the primary purposes of these rules is the CFTC’s desire to inform the public to the fullest extent possible of its activities as an aid to its properly carrying out its responsibility for administering and enforcing the CEA . . .”</p> <p>The CFTC also has adopted regulations that provide objective due process procedures to ensure that various aspects of its programs are conducted with fairness and impartiality. <i>See, e.g.,</i> response to Principle 5, Question 1(d).</p> <p>As previously noted (<i>see</i> response to Principle 4, Question 1), Federal agencies such as the CFTC also must comply with certain general rulemaking requirements (<i>e.g.,</i> the Regulatory Flexibility Act that requires agencies to take into account the impact of proposed rules on small businesses, and the PRA that requires agencies to review rules to evaluate the</p>

<sup>64</sup> 5 U.S.C. 552b.

	information collection burden such rules would impose on the public).
(b)	Is the regulator required to give reasons in writing for its decisions that affect the rights or interests of others?
	Yes. The regulator must give reasons in writing for final agency action that affects the rights or interests of others. The APA requires agencies to incorporate in the rules adopted a concise general statement of their basis and purpose.
(c)	Are all material actions of the regulator in applying its rules subject to review?
	Yes. Procedural challenges to agency actions under the APA may be brought by aggrieved parties in U.S. Federal District Courts.
(d)	Are such decisions subject to judicial review where they adversely affect legal or natural persons?
	Yes. See response to Principle 4, Question 3(c).
(e)	Are the general criteria for granting, denying, or revoking a licence made public, and are those affected by the licensing process entitled to a hearing with respect to the regulator's decision to grant, deny, or revoke a licence?
	<p>Yes. The general criteria for registration as an, DCM, DCO, FBOT, RFED, SDR, and SEF are public and included in Parts 38, 39, 48, 3, 49, and 37, respectively, of the CFTC's regulations. The general criteria for granting the various categories of intermediary registration (<i>i.e.</i>, registration as an FCM, RFED, IB, CTA, CPO, leverage transaction merchant, floor trader, floor broker, SD, and MSP) are made public in Parts 3 and 23 of the CFTC's regulations.</p> <p>The general criteria for the denial, conditioning or revocation of a registration, as well as conditions concerning the opportunity for a hearing, are contained in Sections 8a(2)-(4) of the CEA and in Subpart C, Part 3 of the CFTC regulations.</p> <p>Section 5e of the CEA authorizes the CFTC to suspend or revoke the designation of a registered entity based on a failure to comply with any of the provisions of the CEA or any rules, regulations or orders of the CFTC.</p> <p>Section 17(l) authorizes the CFTC, after notice and opportunity for a hearing, to suspend or revoke the registration of a registered futures association ("RFA")<sup>65</sup> if the CFTC finds, among other enumerated reasons, that the association violated the CEA or CFTC rules.</p>
	<i>Transparency and Confidentiality</i>
4.	If applicable, are procedures for making reports on investigations public consistent with the rights of individuals, including confidentiality and data protection?
	Yes. See Section 8 of the CEA and response to Principle 2, Questions 6 and 8.
	<i>Consistent Application</i>
5.	Are the regulator's exercise of its powers and discharge of its functions consistently

<sup>65</sup> NFA is the only RFA. NFA is the SRO for the futures industry that regulates every registrant who conducts futures, options, or swaps trading business with customers, subject to CFTC oversight. FCMs, RFEDs, IBs, CPOs, CTAs, SDs, MSPs and APs are generally required, unless otherwise exempt, to be registered with the CFTC. However, the CFTC has delegated the registration function to the NFA so that such persons submit their registration applications to NFA and NFA approves/denies registration, subject to CFTC oversight. Section 17 of the CEA and Part 170 of the CFTC's regulations governs RFAs.

applied?
Yes. <i>See response to Principle 4, Question 3.</i>

<b>Principle 5      The staff of the Regulator should observe the highest professional standards including appropriate standards of confidentiality</b>	
<b>Key Questions</b>	
1.	Are the staff of the regulator required to observe legal requirements or a "Code of Conduct" or other written guidance, pertaining to:
(a)	The avoidance of conflicts of interest?
	<p>Yes. Subpart C of Part 140 of the CFTC's regulations establishes general ethical standards of conduct for CFTC employees and CFTC Commissioners. CFTC Regulation 140.735-2 restricts business and financial transactions and interests; Regulation 140.735-3 restricts non-governmental employment and outside activities; Regulation 140.735-4 restricts the receipt and disposition of foreign gifts and decorations; Regulation 140.735-5 prohibits the disclosure of non-public commercial, economic or official information to any unauthorized person; and Regulation 140.735-6 restricts the scope of former CFTC employees to practice or otherwise represent a person before the CFTC.</p> <p>Regulations issued by the U.S. Office of Government Ethics found in 5 C.F.R. Part 2635 also applies to CFTC employees and cover the following areas: basic obligations of public trust; gifts from outside sources; gifts between employees; conflicting financial interests; impartiality in performing official duties; seeking other employment; misuse of position; and outside activities.</p> <p>Executive Order #12674 (dated April 12, 1989) also mandates high principles of ethical conduct for government employees.</p> <p>While greatly detailed, in substance all of these ethical requirements establish that public service is a public trust and that all government employees must avoid both explicit conflicts of interests as well as even the appearance of impropriety in the conduct of their official business.</p> <p><i>See also</i> response to Principle 2, Question 8, regarding penalties for CFTC employees and Commissioners trading on inside information and/or misusing insider information.</p>
(b)	Restrictions on the holding or trading in securities subject to the jurisdiction of the regulatory authority and/or requirements to disclose financial affairs or interests?
	Yes. <i>See</i> response to Principle 5, Question 1(a).
(c)	Appropriate use of information obtained in the course of the exercise of powers and the discharge of duties?
	Yes. The regulations cited in response to Principle 5, Question 1(a), above, also would prohibit the inappropriate use of information obtained in the course of employment at the CFTC. <i>See</i> response to Principle 2, Question 8 (regarding the prohibitions on use of non-public information by CFTC employees in Section 9 of the CEA).
(d)	Observance of confidentiality and secrecy provisions and the protection of personal data?
	Yes. Except as otherwise provided in the CEA, Section 8(a) of the CEA prohibits the CFTC from disclosing publicly data and information that would separately disclose the business



transactions, or market positions of any person and trade secrets or names of customers. Section 9(a)(5) makes it a felony punishable by a fine of up to \$500,000 for an individual and/or imprisonment up to five years if any person willfully violates any other provision of the CEA.

Part 145 of the CFTC regulations contains recordkeeping and access requirements, including requirements governing the handling and protection of nonpublic information. In order to prevent a clearly unwarranted invasion of personal privacy, CFTC Regulation 145.4 authorizes the CFTC to delete identifying details when it makes available "public records" as defined in CFTC Regulation 145. CFTC Regulation 145.5 authorizes the CFTC to withhold from public disclosure any nonpublic records, including: records specifically exempted from disclosure by statute such as data and information which would separately disclose the business transactions or market positions of any person and trade secrets or names of customers; any data or information concerning or obtained in connection with any pending investigation of any person; trade secrets and commercial or financial information obtained from a person and privileged or confidential; and certain enumerated sections of financial reports required to be submitted to the CFTC.

Part 146 of the CFTC rules implements the Privacy Act, which provides protections for information concerning an individual. Among the primary purposes of these rules is to permit individuals to determine whether information about them is contained in Government files and, if so, to obtain access to that information; to establish procedures whereby individuals may have inaccurate and incomplete information corrected; and to restrict access by unauthorized persons to that information.

(e) Observance by staff of procedural fairness in performance of their functions?

Yes. As discussed in response to Principle 4, Question 3, above, the APA imposes mandatory procedures (notice and public comment) on the CFTC to ensure procedural fairness in the proposal and adoption of rules. The APA also establishes procedures in the adjudicatory context.

In addition, the CFTC has adopted rules of procedure addressing various aspects of the CFTC's program. For example:

- CFTC regulations in Part 9 includes procedural regulations relating to the review of exchange disciplinary, access denial or other adverse actions;
- CFTC regulations in Part 10 contains rules of practice that are generally applicable to adjudicatory proceedings before the CFTC under the CEA (such as denial, suspension, revocation, conditioning, restricting or modifying registration, the issuance of cease and desist orders, the denial of trading privileges, the assessment of civil penalties, the issuance of restitution orders) and any other proceeding where the CFTC declares them to be applicable;
- CFTC regulations in Part 11 govern rules relating to investigatory proceedings

	<p>conducted by the CFTC or its staff;</p> <ul style="list-style-type: none"> <li>• CFTC regulations in Part 12 relate to reparation proceedings (i.e., claims against registrants for violations of the CEA and CFTC regulations resolved by Administrative Law Judges or hearing officers) pursuant to Section 14 of the CEA;</li> <li>• CFTC regulations in Part 14 relate to the suspension or disbarment of persons from appearance and practice before the CFTC as an attorney or accountant;</li> <li>• CFTC regulations in Part 147 specify the regulations applicable to the conduct of CFTC business, with a presumption of open CFTC meetings; and</li> <li>• CFTC regulations in Part 171 govern procedures applicable to the review of National Futures Association or ("NFA") decisions.</li> </ul>
2.	Are there:
(a)	Processes to investigate and resolve allegations of violations of the above standards?
	Yes. See response to Principle 5, Question 1(e).
(b)	Legal or administrative sanctions for failing to adhere to these standards?
	Yes, as noted above in response to Principle 5, Question 1(a), the CFTC has adopted ethics regulations. Annual seminars and/or the dissemination of printed materials or films communicate such ethical standards to employees. As further noted, above, criminal penalties attach to certain ethical violations.

<b>Principle 6</b>	<b>The Regulator should have or contribute to a process to monitor, mitigate and manage systemic risk, appropriate to its mandate</b>
<b>Key Questions</b>	
1.	Does the regulator have or contribute to a regulatory process (which may be focused on the securities market or be cross-sectoral) to monitor, mitigate, and appropriately manage systemic risk, according to the complexity of the Regulator's market consistent with its mandate and authority?
<p>Yes. The Commission has market surveillance and financial risk procedures to identify risks.</p> <p><b><u>Market Surveillance</u></b></p> <p>Market risks present in the derivatives markets under CFTC jurisdiction are generally assessed by the CFTC's market surveillance program. Market surveillance is intended to preserve the economic functions of U.S. derivatives markets under CFTC jurisdiction by monitoring trading activity:</p> <ul style="list-style-type: none"> <li>• to detect and prevent manipulation or abusive practices;</li> <li>• to keep the CFTC informed of significant market developments;</li> <li>• to enforce CFTC and exchange speculative position limits; and</li> <li>• to ensure compliance with CFTC reporting requirements.</li> </ul> <p>The market surveillance program's primary mission is to identify situations that could pose a threat of manipulation and to initiate appropriate preventive actions in physical commodities related to corners and squeezes. Further surveillance is conducted forensically to uncover manipulation or other abusive practices in markets within the CFTC's jurisdiction for which information is not readily available or detection is not possible in real-time. Each day, for all active futures and option contract markets, the CFTC's market surveillance staff monitors the activities of large traders, and examines all price spikes, scheduled news release periods of market-sensitive data, all daily settlements in the major commodities and all option and final settlements in all major futures and options contracts. Staff also tracks key price relationships, and relevant supply and demand factors in a review for potential market problems. With the addition of swaps, staff monitors credit events for impacts on credit default indices and initiates an evaluative process to determine if the CDS settlement, after a credit event, was potentially manipulated. Interest rates swaps, foreign exchange, currency swaps and the other commodity asset class swaps are regularly examined for potential abuses and submission compliance with Commission regulations.</p> <p><b><u>Financial Risk</u></b></p> <p>DCOs under the CFTC's jurisdiction must comply with 18 Core Principles in order be registered and to maintain registration. These Core Principles address the following</p>	

topics, among others:

- Financial Resources
- Risk Management
- Settlement Procedures
- Treatment of Funds
- Default Rules and Procedures
- Rule Enforcement
- System Safeguards
- Reporting
- Recordkeeping

CFTC risk surveillance staff monitors the risk posed to and by DCOs, clearing members, and market participants, including market risk, liquidity risk, credit risk, and concentration risk. Relevant margin and financial resources are included within this monitoring program. CFTC staff regularly conducts back-testing to review margin coverage at the product level and follows up with the relevant clearing house regarding exceptional results. Independent stress testing of portfolios is conducted regularly. The independent stress tests may lead to individual trader reviews and/or FCM risk reviews. Traders and FCMs that have a higher risk profile are then reviewed during the Commission's on-site review of a clearing house's risk management procedures. In addition, CFTC risk surveillance also coordinates with other domestic and foreign regulators on matters of common jurisdictional interest.

The CFTC's examination group examines DCOs that are registered with the Commission for compliance with the 18 DCO Core Principles as well as all relevant CFTC regulations. These Core Principles encompass all aspects of clearing, and an examination frequently involves a sophisticated analysis of a broad range of topics including, but not limited to, the adequacy of a DCO's financial, operational and managerial resources; the DCO's ability to manage all risks associated with clearing and settlement, including whether the DCO uses appropriate tools and procedures to monitor such risks; whether the DCO's risk analysis and oversight program is able to accurately identify and minimize sources of operational risk; and a DCO's ability to resist, and to minimize, any potential damage from cyber security threats. The exams group examines DCOs as frequently as practicable. In addition, the exams group examines each SIDCO at least once annually to determine: (1) the nature of the operations of, and the risks borne by, the SIDCO; (2) the financial and operational risks presented by the SIDCO to financial institutions, critical markets or the broader financial system; (3) the resources and capabilities of the SIDCO to monitor and control such risks; (4) the safety and soundness of the SIDCO; and (5) the SIDCO's compliance with (A) Title VIII of the Dodd-Frank Act, and (B) the rules and orders prescribed under Title VIII of the Dodd-Frank Act. The exams group also frequently coordinates with other domestic and foreign regulators during an examination. Finally, the DCO exams group also performs the following tasks: (i) reviews all quarterly

submissions from DCOs to evaluate compliance with the CFTC's financial resource requirements; (ii) reviews the certified financial statements of each DCO; (iii) reviews the notice filings from all DCOs; (iv) assists with DCO applications by reviewing information supporting the DCO applicant's compliance with certain Core Principles; and (v) assists in the review of SIDCO material rule change filings.

### **Economic Research and Analysis.**

The Office of the Chief Economist ("OCE") provides economic support and advice to the Commission, conducts research on policy issues facing the Commission, and educates and trains Commission staff. The OCE plays an integral role in the preparation of new financial market regulations by providing economic expertise and analysis of cost-benefit considerations underlying those regulations. As new financial market regulations are implemented, the OCE will assess the impact of these regulations on derivatives markets.

The OCE maintains an economic research program focused on the quantitative analysis of the ever-evolving changes in trading technology, trading instruments and types of market participants. Specifically, the OCE focuses its quantitative research program to analyze the following four broad areas:

- Analysis of the composition of speculative market participants in futures and options markets;
- Analysis of the linkages between and among futures, option, swap, securities and cash markets;
- Analysis of the effects of swap markets and swap market participants on market structure; and
- Analysis of high frequency and algorithmic trading.

The analysis of the composition of speculative market participants provides input into the Commission's policy decisions on the potential impact of these traders in markets. Such analyses include identifying certain categories of traders; and identifying whether traders' individual or collective positions or trading activity impact price, volatility or liquidity in markets.

The analysis of the linkages between and among various markets helps to assess the transmission mechanisms between derivatives markets and securities and cash markets in order to monitor systemic risk issues. Such analysis includes identifying correlations among various markets and asset classes and determining whether an event in one market may trigger similar events in other markets.

### **The FSOC**

The CFTC is also a member of the FSOC. Under Section 113 of the Dodd-Frank Act, the

FSOC is authorized to determine that a nonbank financial company's material financial distress—or the nature, scope, size, scale, concentration, interconnectedness or mix of its activities—could pose a threat to U.S. financial stability.

The Dodd-Frank Act also authorizes the FSOC to designate a Financial Market Utility ("FMU") as "systemically important" if the FSOC determines that the failure of or a disruption to the functioning of the FMU could create or increase the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system. Pursuant to Title VIII of the Dodd-Frank Act, designated FMUs are subject to heightened prudential and supervisory requirements that promote robust risk management and safety and soundness, including conducting their operations in compliance with applicable risk-management standards; providing advance notice and review of changes to their rules, procedures and operations that could materially affect the nature or level of their risks; and being subject to relevant examination and enforcement provisions.

2. Is the regulator developing expertise regarding risk measurements and analysis relevant to systemic risk, or if not, is the regulator able to take into consideration and apply risk measurements and analysis developed by other regulators?

Yes. The CFTC conducts its systemic risk work independently as well as with the FSOC and FSOC members. As described above, the CFTC has several risk surveillance teams dedicated to measuring and analyzing risk so as to identify, mitigate and manage systemic risk. In addition to these internal programs, the CFTC works with the FSOC to help it identify threats to the financial stability of the United States; promote market discipline; and respond to emerging risks to the stability of the U.S. financial system. The FSOC consists of 10 voting members and 5 nonvoting members, including federal and state regulators. The CFTC is a voting member. FSOC operates through a number of functional committees on which the CFTC serves, including an FMU Committee and a Systemic Risk Committee.

In connection with the Volcker rule, the Commission will receive extensive information regarding risk measures and analysis relevant to systemic risk. In receiving and reviewing this information, the Commission expects to coordinate with the SEC, Federal Reserve, FDIC and OCC.

On July 18, 2012, the FSOC designated eight financial market utilities as systemically important, including the following registered clearing agencies: Chicago Mercantile Exchange Inc. ("CME"), The Depository Trust Company, Fixed Income Clearing Corporation, ICE Clear Credit ("ICC"), National Securities Clearing Corporation, and Options Clearing Corporation. Of these registered clearing agencies, CME and ICC are SIDCOs for which the CFTC is the Supervisory Agency. The Options Clearing Corporation also is registered with the CFTC as a DCO.

3. Is there communication and information sharing between the regulator and other domestic regulators who have responsibility for systemic stability with respect to efforts to reduce systemic risks?

Yes. As described above, the CFTC frequently coordinates with other domestic and foreign regulators on matters of common jurisdictional interest as well as on DCO examinations. In addition, as a voting member, Supervisory Agency, and subject matter expert, the CFTC frequently works with the FSOC on a number of matters, including systemic risk surveillance. The FSOC was created as part of the Dodd-Frank Act and specific FSOC authorities include:

- Facilitate Regulatory Coordination: The FSOC has a statutory duty to facilitate information sharing and coordination among the member agencies regarding domestic financial services policy development, and rulemaking, examinations, reporting requirements and enforcement actions with respect to designated FMUs and designated nonbank financial companies.
- Facilitate Information Sharing and Collection: In instances where the data available proves insufficient, the FSOC has the authority to direct the OFR to collect information from certain individual financial companies to assess risks to the financial system, including the extent to which a financial activity or financial market in which the financial company participates, or the financial company itself, poses a threat to the financial stability of the United States.
- Designate Nonbank Financial Companies for Consolidated Supervision: In the run up to the financial crisis, some of the firms which posed the greatest risk to the financial system were not subject to tough consolidated supervision. The Dodd-Frank Act gives the FSOC the authority to require consolidated supervision of nonbank financial companies, regardless of their corporate form.
- Designate Systemic Financial Market Utilities and Systemic Payment, Clearing, or Settlement Activities: The Dodd-Frank Act authorizes the FSOC to designate FMUs and payment, clearing or settlement activities as systemically important, requiring them to meet risk management standards prescribed by the relevant Supervisory Agency and heightened oversight by the Federal Reserve, SEC or CFTC.
- Recommend Stricter Standards: The FSOC has the authority to recommend stricter standards for the largest, most interconnected firms, including nonbanks, designated by the FSOC for Federal Reserve supervision. Moreover, where the FSOC determines that certain practices or activities pose a threat to financial stability, the FSOC may make recommendations to the primary financial regulatory agencies for new or heightened standards.
- Recommend Congress close specific gaps in regulation.

**Principle 7      The Regulator should have or contribute to a process to review the perimeter of regulation regularly.**

**Key Questions**

1. Does the regulator have or participate in a process, to identify and assess whether its regulatory requirements and framework adequately addresses risks posed by products, markets, market participants and activities to investor protection, fair, efficient and transparent markets and the reduction of systemic risk?

Yes. The FSOC is a forum for the exchange of issues and concerns among the U.S. financial regulatory agencies which participate in the FSOC. As noted in response to Principle 1, Question 2(d), the FSOC members include the heads of, among others, the Treasury Department, Federal Reserve, CFTC, OCC, CFPB, SEC, and FDIC. The agencies are all separate US government agencies. Review occurs through staff discussions within the FSOC, through event-based discussions with other regulatory agencies, and through the day-to-day exercise of supervisory responsibilities.

In addition to participation with FSOC, the CFTC staff also is in regular contact with officials at the SEC, the Federal Reserve, the FDIC, the OCC, and the Treasury Department, which provides opportunity to discuss any emerging regulatory concerns. For example, in connection with its implementation of the Volcker rule, the CFTC staff is coordinating closely with the staffs of the SEC, the Federal Reserve, the FDIC and the OCC with regard to monitoring information provided by banking entities.

In the event that a particular concern is identified, the CFTC has formed joint study groups with the SEC. For example, the Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues was established on May 11, 2010, only a few days after the dramatic securities market events of May 6, 2010, called by some the "Flash Crash." The Committee is charged with addressing regulatory issues of mutual concern to the CFTC and SEC. Subjects identified in the Committee's charter include: identifying emerging regulatory risks; assessing and quantifying the impact of such risks and their implications for investors and market participants; and furthering the efforts of the CFTC and the SEC towards regulatory harmonization. See Joint Advisory Committee report: recommendations regarding regulatory responses to the market events of May 6, 2010 at:

[http://www.cftc.gov/PressRoom/Events/opaevent\\_cftcsec021811](http://www.cftc.gov/PressRoom/Events/opaevent_cftcsec021811).

A more formal method of review occurs within the OCE. As discussed in response to Principle 6, Question 1, OCE provides economic support and advice to the Commission, conducts research on policy issues facing the Commission, and educates and trains Commission staff. OCE plays an integral role in the preparation of new financial market regulations by providing economic expertise and analysis of cost-benefit considerations underlying those regulations. As new financial market regulations are implemented, OCE will assess the impact of these regulations on derivatives markets.

OCE maintains an economic research program focused on the quantitative analysis of the



ever-evolving changes in trading technology, trading instruments, and types of market participants. Specifically, OCE focuses its quantitative research program to analyze the following four broad areas:

- Analysis of the composition of speculative market participants in futures and options markets. The analysis of the composition of speculative market participants provides input into the Commission's policy decisions on the potential impact of these traders in markets. Such analyses include identifying certain categories of traders and whether their individual or collective positions or trading activity impact price, volatility, or liquidity in markets.
- Analysis of the linkages between futures, option, swap, securities, and cash markets. The analysis of the linkages between various markets helps to assess the transmission mechanisms between derivatives markets and securities and cash markets in order to monitor systemic risk issues. Such analysis includes identifying correlations among various markets and asset classes and determining whether an event in one market may trigger similar events in other markets.
- Analysis of the effects of swap markets and swap market participants on market structure. The analysis of the effects of swap execution facilities and swap market participants on the market structure of derivatives markets provides input into the Commission's assessment of new market participants and trading venues. Further, economic analysis will serve as the basis for many studies mandated after the Dodd-Frank Act regulations are in effect.
- Analysis of high frequency and algorithmic trading. The analysis of high frequency and algorithmic trading provides tools to help the Commission's surveillance and enforcement divisions to detect disruptive trading patterns and participants who attempt to manipulate markets.

The CFTC's Advisory Committees provide input and make recommendations to the Commission on a variety of regulatory and market issues that affect the integrity and competitiveness of U.S. markets. The committees facilitate communication between the Commission and U.S. futures and swaps markets, trading firms, market participants, and end users. The committees, governed by the provisions of the Federal Advisory Committee Act, currently include:

- Agricultural Advisory Committee
- Global Markets Advisory Committee
- Energy and Environmental Markets Advisory Committee
- Technology Advisory Committee
- CFTC-SEC Joint Advisory Committee

The agenda of a recent Technology Advisory Committee illustrates the "perimeter of regulation" type inquiries taking place within the Committee: working group 1

	presentations on automated and high frequency trading, including a gap analysis and issues related to oversight and surveillance, market microstructure issues. Available at <a href="http://www.cftc.gov/About/CFTCCcommittees/TechnologyAdvisory/tac_meetings">http://www.cftc.gov/About/CFTCCcommittees/TechnologyAdvisory/tac_meetings</a>
2.	Does the regulator have a process to review, where it is presented with evidence of changing circumstances, its past regulatory policy decisions on products, markets, entities, market participants or activities, especially decisions to exempt, and take measures as appropriate?
	<p>Yes. Review of past regulatory policy decisions occurs through a variety of mechanisms:</p> <p>(a) Executive Order 13563, "Improving Regulation and Regulatory Review" (issued Jan. 18, 2011), calls on agencies to undertake an annual retrospective review of agency regulations. The Executive Order emphasizes several guiding principles, including that: agencies consider the costs and benefits of their regulations and choose the least burdensome path; the regulatory process must be transparent and include public participation; and agencies must attempt to coordinate, simplify and harmonize regulations to reduce costs and promote certainty for businesses and the public. Section 6 of the Executive Order focuses on the importance of maintaining a consistent culture of retrospective review and analysis by agencies of their regulatory programs. To that end, section 6 includes a "look-back" provision for agencies to develop a preliminary plan under which the agency will periodically review its existing significant regulations to determine whether any should be modified, streamlined, expanded or repealed in order to make the agency's regulatory program more effective and less burdensome.</p> <p>As part of the implementation of the Dodd-Frank Act, the Commission has reviewed many of its existing regulations. In determining the extent to which these existing regulations needed to be modified to conform to the Dodd-Frank Act's new requirements, the Commission has subjected many of its rules to scrutiny in accordance with the Executive Order. The Commission's retrospective review of its existing regulations is well underway.</p> <p>After the substantial completion of the promulgation of final rules under the Dodd-Frank rulemaking process, the Commission's Staff intends to begin the process of the periodic, retrospective examination of the remainder of its regulations (i.e., those regulations that were not reviewed as part of the Dodd-Frank effort). A Regulatory Review Group ("Group"), consisting of senior agency staff, will be formed to implement the further review of Commission regulations in accordance with the Executive Order. See 76 Federal Register 38328, 38329 (June 30, 2011) available at: <a href="http://www.cftc.gov/ucm/groups/public/@lfederalregister/documents/file/2011-16430a.pdf">http://www.cftc.gov/ucm/groups/public/@lfederalregister/documents/file/2011-16430a.pdf</a> See 2012 status report on retrospective review of agency regulations (June 7, 2012) at: <a href="http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/oirastatusreport060712.pdf">http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/oirastatusreport060712.pdf</a>. See 2013 status report on retrospective review of agency regulations (July 8, 2013) at: <a href="http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/oirastatusreport070813.pdf">http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/oirastatusreport070813.pdf</a></p> <p>(b) Periodic reauthorization legislative proceedings in which the CFTC often makes various</p>

	<p>legislative recommendations to amend the CEA.</p> <p>(c) Internal review through the CFTC's Strategic Plan, which sets out the CFTC's regulatory priorities. Although the plan covers five year periods, the Commission continuously reviews the continuing relevancy of the plan through discussions with the operating divisions. These discussions generally culminate in formal structured discussions.</p> <p>The approved Strategic Plan forms the basis for each fiscal year's operating plan and associated activities. At the end of each fiscal year or the conclusion of individual activities, Staff evaluates performance and resource utilization against performance measures that have been identified in the Strategic Plan and in the CFTC's budget submissions to Congress. These evaluations tell the Commission how effective it has been and whether adjustments are needed in the future program activities or resource allocations.</p> <p><a href="http://www.cftc.gov/reports/strategicplan/2015/">http://www.cftc.gov/reports/strategicplan/2015/</a></p> <p>(d) Through initiatives raised by individual commissioners at advisory committee and formal Commission meetings.</p>
3.	<p>Does the regulator participate in a process (with other financial system supervisors and regulators if appropriate) which reviews unregulated products, markets, market participants and activities, including the potential for regulatory arbitrage, in order to promote investor protection and fair, efficient and transparent markets and reduce systemic risks?</p>
	<p>Yes. The same processes identified above in Question 2 are also used to address unregulated financial markets and products. See response to Principle 7, Question 1.</p>
4.	<p>Does the regulator seek legislative or other changes when it identifies a regulatory weakness or risk to investor protection, market fairness, efficiency and transparency that requires legislative or other changes?</p>
	<p>Yes. The Chairman, Commissioners, and Staff testify before various committees of Congress and it is not uncommon for such testimony to identify potential areas for legislative change.</p>

**Principle 8      The Regulator should seek to ensure that conflicts of interest and misalignment of incentives are avoided, eliminated, disclosed or otherwise managed.**

**Key Questions**

1. Does the Regulator have in place a process designed to identify and evaluate potential and actual conflicts of interest regarding regulated entities and misalignment of incentives regarding issuers and regulated entities?

Yes. The Dodd-Frank Act requires SDs and MSPs to implement conflict of interest systems and procedures that establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity or swap, or acting in a role of providing clearing services, are separated by appropriate informational partitions from persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment and contravene open access requirements or business conduct standards set forth in the Act.<sup>66</sup> The Dodd-Frank Act also prohibits SDs and MSPs from taking any action that would result in an unreasonable restraint of trade or impose a material anticompetitive burden on trading or clearing unless necessary or appropriate to achieve the purposes of the Act. CEA Section 4s(j)(6). Commission Regulation 23.605 implements the conflict of interest provisions set forth in the CEA for SDs and MSPs and requires, among other things, the disclosure of any financial interest in any derivative of a type that a research analyst follows, the general nature of the financial interest, and appropriate informational partitions between business trading units of a SD or MSP and clearing units of any affiliated clearing member of a DCO.

Section 732 of the Dodd-Frank Act amends section 4d of the CEA by directing FCMs and IBs to implement similar informational partitions between those researching or analyzing prices or markets for commodities and those involved in trading or clearing activities. Commission Regulation 1.71 implements the conflict of interest provisions for FCMs and IBs set forth in the Act and contains, among other things, provisions prohibiting improper interference with clearing decisions and undue influence on customers, as well as the disclosure of any financial interest that a research analyst maintains in any derivative of a type that the research analyst follows and the general nature of the financial interest.

Section 726 of the Dodd-Frank Act requires the Commission to mitigate conflicts of interest in the operation of certain DCOs, DCMs, and SEFs. Section 726(a) provides that the Commission's rules may include numerical limits on the control of, or the voting rights with respect to any DCO that clears swaps, or SEF or DCM that posts swaps or makes swaps available for trading, by a bank holding company with: (i) over \$50,000,000,000 in total consolidated assets; (ii) a nonbank financial company supervised by the Board of Governors of the Federal Reserve System; an affiliate of (i) or (ii); (iv) an SD; (v) an MSP; or (vi) an AP of (iv) or (v). Section 726(b) directs the Commission to determine the manner in which its rules may be deemed necessary or appropriate to improve the governance of certain DCOs,

<sup>66</sup> CEA Section 4s(j)(5).

	<p>DCMs, or SEFs or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with the interaction between SDs and MSPs, on the one hand, and such DCOs, DCMs, and SEFs. Section 726(c) directs the Commission to consider the manner in which its rules address conflicts of interest in the above-mentioned interaction arising from equity ownership, voting structure, or other governance arrangements of the relevant DCOs, DCMs, and SEFs. The Commission proposed rules to implement these requirements in 2010.<sup>67</sup> The Commission has not finalized the proposed regulations.</p> <p>DCMs, DCOs, SEFs and SDRs, however, must satisfy certain conflicts of interest requirements in the CEA. DCM Core Principle 16, set forth in Section 5(d)(16) of the CEA; DCO Core Principle P, set forth in Section 5b(c)(2)(P) of the CEA; and SEF Core Principle 12, set forth in Section 5h(f)(12) require DCMs, DCOs and SEFs, respectively, to establish and enforce rules to minimize conflicts of interest in their decision-making processes and to establish a process for resolving conflicts of interest. Section 21(f)(3) of the CEA sets forth a conflict of interest Core Principle applicable to an SDR. The Commission has identified certain conflicts that may implicate access, disclosure, or use of SDR Information. SDR Information includes any information that an SDR receives from a reporting counterparty, including market participants such as DCMs, DCOs, SEFs, SDs, MSPs and non-SD/MSP counterparties. The requirement that SDRs have in place a Chief Compliance Officer—mandated by section 21(e) of the CEA and implemented in Commission Regulation 49.22—supports the importance of risk management and proper conflict of interest management going forward.</p>
2.	<p>Where the Regulator identifies significant conflicts of interest among regulated entities or misaligned incentives, does it take steps so that these conflicts of interest or misalignments are avoided, eliminated, disclosed or otherwise managed?</p>
	<p>Yes, as noted in the response to Principle 8, Question 1, SDs, MSPs, FCMs and IBs must disclose whether an affiliated research analyst maintains a financial interest in any derivative of a type that the research analyst follows, and the general nature of the financial interest. Additionally, SDs and MSPs must disclose certain material information to counterparties, including the material risks of the particular swap, which may include market, credit, liquidity, foreign currency, legal, and operational risks; the material characteristics of the particular swap, including material economic terms and the rights and obligations of the parties; and the material incentives and conflicts of interest that the SD or MSP may have in connection with a particular swap.<sup>68</sup></p> <p>Additionally, pursuant to Sections 6(c), 6(d) or 6c of the CEA, the CFTC can bring an action against DCMs, DCOs, SEFs and SDRs for a failure to comply with their respective Core</p>

<sup>67</sup> The proposed rules strengthened versions of the acceptable practices that the Commission previously adopted for DCMs prior to the passage of the Dodd-Frank Act. The proposed rules also incorporated certain elements of: (i) The *Proposal for a Regulation of the European Parliament and of the Council on OTC Derivatives, Central Counterparties, and Trade Depositories* (the “European Commission Proposal”); and (ii) the 2009 draft of the *Principles for Financial Market Infrastructure* (“PFMIs”). The European Commission Proposal was adopted on December 19, 2012. The PFMIs were finalized in April 2012.

<sup>68</sup> See CFTC Regulation 23.431.

	Principles. Pursuant to Sections 8a(3) and 8a(4) of the CEA, the CFTC also has the authority to suspend, restrict or revoke the registrations of any person for various reasons, including for general good cause shown.
3.	Where the Regulator requires conflicts of interest or misaligned incentives to be disclosed, are the disclosures mandated in such a way that they are accessible by investors and/or the users of the services or products?
	Yes. The disclosures regarding financial interests in any derivative of a type that a research analyst follows described in the response to Principle 8, Questions 1 and 2 must be disclosed in research reports and any public appearances by a research analyst. The disclosures must be clear, comprehensive, and prominent. With respect to public appearances by research analysts, the disclosures must be conspicuous. <sup>69</sup> The disclosures of material information by SDs and MSPs described in the response to Principle 8, Question 2 must be made at a reasonably sufficient time prior to entering into a swap in a manner reasonably designed to allow the counterparty to assess the information. <sup>70</sup>

<sup>69</sup> See CFTC Regulations 1.71(c)(5) and 23.605(c)(5).

<sup>70</sup> See CFTC Regulation 23.431.

**PRINCIPLE RELATING TO SELF-REGULATION (9)**

**Principle 9** Where the regulatory system makes use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, such SROs should be subject to the oversight of the Regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.

**Key Questions**

*Performance of Functions of SRO*

1. Are there organizations that:

(a) Establish rules of eligibility that must be satisfied in order for individuals or firms to participate in any significant securities activity?

Yes. There are several categories of organizations authorized by the CEA which have self-regulatory responsibilities: futures exchanges (e.g., DCMs), SEFs, DCOs, and RFAs. Although CFTC Regulation 1.3(ee) defines the term self-regulatory organization as a contract market, SEF or RFA, DCOs also have self-regulatory obligations and are discussed (where appropriate) for completeness.

**DCMs.** DCMs are boards of trade (or exchanges) that operate under the regulatory oversight of the CFTC pursuant to Section 5 of the CEA. DCMs may list for trading swaps, futures or option contracts based on any underlying commodity, index, or instrument.

Currently Active DCMs:

- Cantor Futures Exchange, LLC
- CBOE Futures Exchange
- Chicago Climate Futures Exchange
- Chicago Mercantile Exchange
- Chicago Board of Trade
- COMEX Division of New York Mercantile Exchange
- ELX Futures, L.P.
- Eris Exchange
- ICE Futures U.S., Inc.
- Minneapolis Grain Exchange
- NASDAQ Futures, Inc. (pending)
- New York Mercantile Exchange
- Nodal Exchange, LLC
- North American Derivatives Exchange, Inc.
- NYSE Liffe US, LLC
- OneChicago, LLC
- trueEx LLC

**SEFs.** SEFs are trading systems or platforms in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility

that facilitates the execution of swaps between persons and is not a DCM.

Current temporarily registered or pending temporary registration SEFs (as of 6/9/2014):

- 360 Trading Networks, Inc.
- BGC Derivatives Markets, L.P.
- Bloomberg SEF LLC
- Chicago Mercantile Exchange, Inc.
- Clear Markets North America, Inc.
- DW SEF LLC
- EOX Exchange LLC
- GFI Swaps Exchange LLC
- GTX SEF LLC
- ICAP Global Derivatives Limited
- ICAP SEF (US) LLC
- ICE Swap Trade LLC
- INFX SEF Inc.
- Javelin SEF, LLC
- LatAm SEF, LLC
- MarketAxess SEF Corporation
- SDX Trading, LLC
- SwapEx LLC
- TeraExchange, LLC
- Thomson Reuters (SEF) LLC
- Tp SEF, Inc.
- Tradition SEF, Inc.
- trueEx LLC
- TW SEF LLC

**DCOs.** A derivatives clearing organization is a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that with respect to an agreement, contract, or transaction enables each party to an agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the DCO for the credit of the parties; arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by participants in the DCO; or otherwise provides clearing services or arrangements that mutualize or transfer among participants in the DCO the credit risk arising from such agreements, contracts, or transactions executed by the participants. A DCO must establish participant eligibility standards that establish appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the DCO) for members of, and participants in, the DCO. Also, each DCO must establish and implement procedures to verify, on an ongoing basis, the compliance of each participation and membership requirement of the DCO.



Current DCOs:

- Cantor Clearinghouse, L.P.
- Chicago Mercantile Exchange, Inc.
- Clearing Corporation
- ICE Clear Credit LLC
- ICE Clear Europe Limited
- ICE Clear US, Inc.
- LCH.Clearnet LLC
- LCH.Clearnet Ltd.
- LCH Clearnet SA
- Minneapolis Grain Exchange Inc.
- Natural Gas Exchange Inc
- North American Derivatives Exchange, Inc.
- Options Clearing Corporation
- Singapore Exchange Derivatives Clearing Limited

**RFAs.** Section 17 of the CEA establishes a framework for one or more RFAs to exist under the oversight of the CFTC. Part 170 of the CFTC's regulations address RFAs. Section 17(m) of the CEA provides that the CFTC may approve rules of RFAs that require persons eligible for membership to become members of a least one such association. The NFA is the only existing RFA. With certain exceptions, all persons and organizations that intend to do business as professionals with respect to transactions regulated by the CFTC must register under Section 8a of the CEA. All individuals and firms that wish to act as market intermediaries must apply for NFA membership or associate status.

Under CFTC Regulation 1.52, DCMs and RFAs may agree to perform certain examination and monitoring functions (for members' compliance with financial reporting and other compliance requirements) to reduce duplicative/multiple monitoring and auditing for compliance. All DCM SROs and NFA are participants in the existing Joint Audit Committee ("JAC") and operate pursuant to the Joint Audit Agreement,<sup>71</sup> which has been approved by the CFTC. The CEA requires DCMs to establish trading rules, discipline violators, and ensure the financial integrity of transactions and member intermediaries. Through the JAC, DCM SROs and NFA divide up primary SRO responsibility for monitoring the financial condition and rule compliance of joint members.

Consistent with its obligations under Section 17 of the CEA and Part 170 of the CFTC's regulations, NFA has promulgated rules fulfilling its statutory and regulatory requirements.

<sup>71</sup> Since many FCMs are members of more than one DCM, the CFTC has allowed the SROs to agree among themselves which of the SROs will be the designated self-regulatory organization (DSRO) for the purpose of auditing and maintaining ongoing financial and sales practice surveillance over member FCMs. The DCM SROs have entered into such allocation agreements among themselves and have established the JAC to coordinate their oversight activities. The JAC has designated NFA as the SRO responsible for periodically advising the CFTC of changes in the allocation of DSRO responsibility. See CFTC Regulation 1.52(c)-(i).

See NFA's Manual/Rules, available at <http://www.nfa.futures.org/nfamanual/NFAManual.aspx>.

**Overview of NFA.** The CFTC has delegated certain responsibilities to NFA, which became an RFA in 1981. This delegation includes requiring NFA to: adopt rules establishing training standards and proficiency testing for persons involved in the solicitation of transactions subject to the CEA, supervisors of such persons, and all persons for whom it has registration responsibilities and to create a program to audit and enforce compliance with such standards; establish minimum capital, segregation, and other financial requirements applicable to its members for whom such requirements are imposed by the CFTC and to implement a program to audit and enforce compliance with such requirements; establish minimum standards governing the sales practices of its members and members' APs; and establish special supervisory guidelines to protect the public interest relating to the solicitation by telephone of new futures or options accounts.

NFA has incorporated into its rules, by reference, the CFTC's segregation, recordkeeping, and related reporting requirements for SDs, MSPs, FCMs, CPOs, IBs, and CTAs. In addition, NFA has adopted net capital rules for FCMs and IBs which, as required by the CEA, are no less stringent than those of the CFTC. NFA's member audit program primarily applies to registrants that are not members of a DCM.

The CFTC has delegated to NFA registration processing functions and the authority to take adverse action, such as to revoke or to deny registration, against registrants and applicants for registration based upon disqualifying conduct set forth in Sections 8a(2) and (3) of the CEA. The CFTC also retains authority to take such actions. NFA also has certain delegated functions with respect to ethics training required of registrants.

In addition, the CFTC delegated to NFA the responsibility generally to review CPO and CTA Disclosure Documents as well as certain other tasks related to activities in the foreign futures and foreign options area and functions concerning agricultural trade option merchants and their APs; authorized NFA to revoke, after 30 days written notice, the confirmation of Regulation 30.10 relief for any firm that fails to comply with the terms and conditions upon which relief was confirmed; and authorized NFA to withdraw the confirmation of Regulation 30.10 relief from any firm that notifies NFA of its decision to forfeit such relief. Regulation 30.10 permits certain market professionals to conduct business in the U.S. based on substantial compliance with the rules of their home jurisdiction.

Commission Regulation 37.204 allows a SEF to contract with an RFA or another registered entity for regulatory services to assist the SEF in complying with the CEA and Commission regulations. However, SEFs remain responsible for the execution of these functions and for compliance with the CEA and Commission regulations.

The CFTC has general oversight responsibility for all NFA functions and full access to information NFA maintains and obtains to ensure compliance with the CEA and rules

<p>thereunder and assure that these functions are carried out fairly and effectively. The CFTC also monitors NFA for enforcement of NFA's own rules and by-laws.</p> <p>In performing its delegated authority, NFA "stands in the shoes" of the CFTC and is subject to all relevant confidentiality requirements applicable to the CFTC.</p>
<p>(b) Establish and enforce binding rules of trading, business conduct and qualification for individuals and/or firms engaging in securities activities?</p>
<p>Yes. See response to Questions 2(a) and (c).</p>
<p>(c) Establish disciplinary rules and/or conduct disciplinary proceedings, which would enable the SRO to impose appropriate sanctions for non compliance of its rules?</p>
<p>Yes.</p> <p><b>DCMs.</b> DCM Core Principle 2, Compliance with Rules, requires a DCM to monitor and enforce compliance with the rules of the DCM. The Commission's regulations interpreting this Core Principle are in CFTC Regulations 38.150-160; <i>See also</i> CFTC Regulation 1.52(a).</p> <p>DCM Core Principle 13, Disciplinary Procedures, requires the board of trade to establish and enforce disciplinary proceedings that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties. The Commission's regulations interpreting this Core Principle are in Parts 38.700-38.712.</p> <p><b>SEFs.</b> SEF Core Principle 2, Compliance with Rules, requires a SEF to establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules. Through CFTC Regulation 37.206, a SEF must have rules in place that will deter abuses and have the capacity to enforce such rules through prompt and effective disciplinary action, including suspension or expulsion of members or market participants that violate the rules of the SEF. <i>See also</i> CFTC Regulations 37.201-205.</p> <p><b>DCOs.</b> DCO Core Principle H, Rule Enforcement, requires a DCO to (a) maintain adequate arrangements and resources for: (i) the effective monitoring and enforcement of compliance with the rules of the DCO; and (ii) the resolution of disputes; (b) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a violation by the member or participant of any rule of the DCO; and (c) report to the CFTC regarding rule enforcement activities and sanctions imposed against members and participants. Commission Regulation 39.17 implements these requirements, and requires a DCO to have adequate arrangements and resources for the effective monitoring and enforcement of compliance with the rules of the DCO and the resolution of disputes.</p> <p><b>RFAs.</b> Section 17(b)(8) of the CEA requires that an RFA develop rules that provide for the appropriate discipline of its members, whether by expulsion, suspension, fine, censure, or any other fitting penalty, for any violation of its rules. Section 17(i) provides that the CFTC</p>

may review the disciplinary action taken by an RFA. The review would identify the rules of the RFA violated by the person in question and confirm whether such rules were applied in a manner consistent with the purposes of the CEA. Pursuant to this authority, the CFTC also may, having found that a penalty is excessive or oppressive, cancel, reduce or require remission of the penalty. NFA's bylaws and rules provide for the imposition of sanctions on members and associates of members for non-compliance with NFA's rules. See NFA's Manual/Rules at <http://www.nfa.futures.org/nfamanual/NFAManual.aspx>.

*Authorization or Delegation Subject to Oversight*

2. As a condition to authorization, does the legislation or the regulator require the SRO to demonstrate that it:

(a) Has the capacity to carry out the purposes of governing laws, regulations and SRO rules consistent with the responsibility of the SRO, and to enforce compliance by its members and associated persons subject thereto those laws, regulations and rules?

Yes.

**DCMs.** The CEA, through DCM Core Principle 1, provides that as a condition to designation as a contract market, the applicant must demonstrate that it complies with 23 Core Principles:

1. Designation as contract market
2. Compliance with rules
3. Contracts not readily subject to manipulation
4. Prevention of market disruption
5. Position limits or accountability
6. Emergency authority
7. Availability of general information
8. Daily publication of trading information
9. Execution of transactions
10. Trade information
11. Financial integrity of contracts
12. Protection of markets and market participants
13. Disciplinary procedures
14. Dispute resolution
15. Governance fitness standards
16. Conflicts of interest
17. Composition of governing boards of contract markets
18. Recordkeeping
19. Antitrust considerations
20. System safeguards
21. Financial resources
22. Diversity of board of directors
23. Securities and Exchange Commission

*See also* CFTC Regulation 38.3.

DCM Core Principle 2 requires a DCM to have rules that provide the board of trade with the ability and authority to obtain any necessary information to perform any function, including the capacity to carry out such international information-sharing agreements as the Commission may require.

To ensure compliance with DCM Core Principle 2, the Commission promulgated regulations in Part 38 requiring a DCM to: (i) prohibit abusive trading practices on its markets by members and market participants, CFTC Regulation 38.152; (ii) have arrangements and resources for effective enforcement of its rules, CFTC Regulation 38.153; (iii) establish and maintain sufficient compliance department resources and staff to ensure that it can conduct effective audit trail reviews, trade practice surveillance, market surveillance, and real-time market monitoring, CFTC Regulation 38.155; (iv) maintain an automated trade surveillance system capable of detecting and investigating potential trade practice violations, CFTC Regulation 38.156; (v) conduct real-time market monitoring of all trading activity on its electronic trading platform(s) to identify disorderly trading and any market or system anomalies, CFTC Regulation 38.157; (vi) establish and maintain procedures that require its compliance staff to conduct investigations of possible rule violations, CFTC Regulation 38.158; and (vii) have the ability and authority to obtain any necessary information to perform any function required under Core Principle 2.

Commission Regulation 38.154, promulgated under Core Principle 2, allows a DCM to use a RFA or other registered entity to provide services to assist in complying with the Core Principles. However, notwithstanding any delegation of function, the DCM retains responsibility for carrying out any function delegated or contracted to a third party. A DCM must ensure that the services received will enable the DCM to remain in compliance with the CEA.

Appendix B to Part 38 provides more specific information on guidance and acceptable practices to comply with the Core Principles.

*See also* CFTC Regulation 1.52 (SRO adoption and auditing of minimum financial and related reporting requirements); CFTC Regulation 38.257 (to comply with regulations under Core Principle 4, the DCM must use a dedicated regulatory department, or by delegation of that function to a registered futures association or a registered entity).

**SEFs.** In order to register and maintain registration as a SEF, Section 5h of the CEA requires the SEF must demonstrate compliance with 15 Core Principles:

1. Compliance with core principles
2. Compliance with rules
3. Swaps not readily subject to manipulation

4. Monitoring of trading and trade processing
5. Ability to obtain information
6. Position limits or accountability
7. Financial integrity of transactions
8. Emergency authority
9. Timely publication of trading information
10. Recordkeeping and reporting
11. Antitrust considerations
12. Conflicts of interest
13. Financial resources
14. System safeguards
15. Designation of chief compliance officer

In the same way as described for DCMs, the CEA, through Core Principle 2 for SEFs, requires a SEF to establish and enforce compliance with any rule of the SEF, establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, establish rules governing the operation of the facility, and require by its rules that when a SD or MSP enters into or facilitates a swap that is subject to mandatory clearing under Section 2(h)(1) of the CEA, the SD or MSP shall be responsible for compliance with the mandatory trading requirement under Section 2(h)(8) of the CEA.

To ensure compliance with SEF Core Principle 2, the Commission's regulations require a SEF to: (i) establish rules governing the operation of the SEF and impartially enforce compliance with the rules of the SEF, CFTC Regulation 37.201; (ii) prior to granting any eligible contract participant access to its facilities, require that the eligible contract participant consent to its jurisdiction, CFTC Regulation 37.202; (iii) establish and enforce trading, trade processing and participation rules that will deter abuses and have the capacity to detect, investigate and enforce those rules, CFTC Regulation 37.203; (iv) establish procedures to capture and retain information that may be used in establishing whether rule violations have occurred, CFTC Regulation 37.205; and (v) establish trading, trade processing, and participation rules that will deter abuses and have the capacity to enforce such rules through prompt and effective disciplinary action, including suspension or expulsion of members or market participants that violate the rules of the SEF, CFTC Regulation 37.206. Additionally, a SEF may choose to contract with a RFA, or the Financial Industry Regulatory Authority for the provision of services to assist in complying with the CEA and Commission regulations. See CFTC Regulation 37.204.

**DCOs.** Core Principle A for DCOs, CEA Section 5b(c)(2)(A), requires compliance with eighteen Core Principles.

1. Compliance
2. Financial resources

3. Participant and product eligibility
4. Risk management
5. Settlement procedures
6. Treatment of funds
7. Default rules and procedures
8. Rule enforcement
9. System safeguards
10. Reporting
11. Recordkeeping
12. Public information
13. Information sharing
14. Antitrust considerations
15. Governance fitness standards
16. Conflicts of interest
17. Composition of governing boards
18. Legal risk

CFTC Regulation 39.12(a)(6) requires a DCO to have the ability to enforce compliance with its participation requirements pursuant to Core Principle C (participant and product eligibility) for DCOs and to establish procedures for the suspension and orderly removal of clearing members that no longer meet the requirements. Core Principle H, Rule Enforcement, requires a DCO to maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and resolution of disputes. In addition, as discussed above, DCO Core Principle H requires a DCO to have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a violation by the member or participant of any rule of the DCO. CFTC Regulation 39.17 implements Core Principle H and requires a DCO to have adequate arrangements and resources for the effective monitoring and enforcement of compliance with the rules of the DCO and the resolution of disputes.

**RFAs.** To be registered and maintain registration as an RFA, Section 17(b)(1) of the CEA requires that the RFA demonstrate through documentation submitted to the CFTC that the RFA is in the public interest, that it will comply with the provisions of Section 17 and the rules and regulations promulgated by the CFTC thereunder, and will fulfil the purposes of Section 17. Section 17(b)(8) of the CEA requires that the RFA demonstrate that the rules of the association provide that its members and persons associated with its members shall be appropriately disciplined, by expulsion, suspension, fine, censure, or being suspended or barred from being associated with all members, or any other fitting penalty, for any violation of its rules.

(b) Treats all members of the SRO, applicants for membership and similarly situated market participants subject to its rules in a fair and consistent manner?

Yes.

**DCMs.** DCM Core Principle 2 requires a DCM to establish, monitor and enforce compliance with access requirement rules. CFTC Regulation 38.151 requires that prior to granting any



member or market participant access to its markets, a DCM must require the member or market participant to consent to its jurisdiction. Additionally, a DCM must provide its members, persons with trading privileges, and independent software vendors with impartial access to its markets and services, including access criteria that are impartial, transparent and applied in a non-discriminatory manner; and (2) comparable fee structures for members, persons with trading privileges and independent software vendors receiving equal access to, or services from, the DCM. See CFTC Regulation 38.151(b). A DCM must also establish and impartially enforce rules governing denials, suspensions, and revocations of a member's and a person with trading privileges' access privileges to the DCM, including when such actions are part of a disciplinary or emergency action by the DCM.

DCM Core Principle 12 requires a DCM to establish and enforce rules to promote fair and equitable trading on the contract market and to protect the market and market participants from abusive practices including fraudulent, noncompetitive or unfair actions, committed by any party. The DCM must have methods and resources appropriate to the nature of the trading system and the structure of the market to detect trade practice and market abuses and to discipline such behavior, in accordance with Core Principles 2 and 4, and their associated Part 38 regulations. The DCM also must provide a competitive, open and efficient market and mechanism for executing transactions in accordance with Core Principle 9.

In addition, there are specific Core Principles for DCMs with respect to minimizing conflicts of interest (Core Principle 16) and antitrust considerations (Core Principle 19) which have bearing on the fairness and consistency with which a DCM interacts with members. See CFTC Regulations 38.850-851 and 38.1000-1001.

**SEFs.** SEF Core Principle 2 requires a SEF to, among other things, establish and enforce compliance with any limitation on access to the SEF. CFTC regulations implementing the Core Principle require the SEF to provide any ECP and any independent software vendor with impartial access to its market(s) and market services, including any indicative quote screens or any similar pricing data displays, provided that the facility has: (1) Criteria governing such access that are impartial, transparent, and applied in a fair and nondiscriminatory manner; (2) Procedures whereby eligible contract participants provide the swap execution facility with written or electronic confirmation of their status as eligible contract participants, as defined by the Act and Commission regulations, prior to obtaining access; and (3) Comparable fee structures for eligible contract participants and independent software vendors receiving comparable access to, or services from, the SEF. CFTC Regulation 37.202(a). A SEF must also establish and impartially enforce rules governing any decision to allow, deny, suspend, or permanently bar eligible contract participants' access to the SEF, including when such decisions are made as part of a disciplinary or emergency action taken by the SEF.

**DCOs.** DCO Core Principle C requires a DCO to have objective, publicly disclosed, fair and open access requirements. See CEA Section 5b(c)(2)(C)(iii). CFTC Regulation 39.12(a)



requires a DCO to establish appropriate admission and continuing participation requirements for clearing members of the DCO that are objective, publicly disclosed and risk based.

**RFAs.** Section 17(b)(2) of the CEA mandates that an RFA's rules provide that any person registered under the CEA, a registered entity, or any other person designated pursuant to the regulations of the CFTC as eligible for membership may become a member of such association. That section also states that the rules of the association may restrict membership in such association on the basis of the type of business conducted by its members. Further, Section 17(b)(5) of the CEA requires that the RFA's rules assure a fair representation of its members in the adoption of any rule of the association or amendment thereto, the selection of its officers and directors, and in all other phases of the administration of its affairs. Consistent with the provisions of the CEA, CFTC Regulation 170.3 provides for the fair and equitable representation of members with respect to the governing board of the association. In particular, the regulation provides that no single class or group of members may dominate or otherwise exercise disproportionate influence on the governing board.

(c) Develops rules that are designed to set standards for its members and to promote investor protection?

Yes.

**DCMs.** Trade practice, handling of customer funds, reporting, recordkeeping and other business standards for commodity professionals, many of whom constitute the class of exchange membership, are established in the first instance by CEA Sections 5(b) and (d), CFTC regulations (Part 38), DCM rules, and, as explained below, by RFA requirements.

DCM Core Principle 21, Financial Resources, requires a DCM to have adequate financial, operational, and managerial resources to discharge each responsibility of the board of trade. The financial resources of the board of trade shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the contract market to cover the operating costs of the contract market for a 1-year period, as calculated on a rolling basis. Commission regulations implementing the Core Principle are found at CFTC Regulation 38.1101.

DCMs must initially and on an ongoing basis demonstrate compliance with DCM Core Principle 12. DCM Core Principle 12, Protection of Market Participants, establishes that boards of trade must establish and enforce rules: (a) to protect market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant; and (b) to promote fair and equitable trading on the contract market. See CFTC Regulation 38.651.

DCM Core Principle 11 provides that the DCM must establish and enforce rules to ensure the financial integrity of FCMs and IBs, and the protection of customer funds. See CFTC

Regulations 38.600-607.

**SEFs.** Core Principle 13, Financial Resources, requires a SEF to have adequate financial, operational, and managerial resources to discharge each responsibility of the SEF. The financial resources of a SEF shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the swap execution facility to cover the operating costs of the SEF for a one-year period, as calculated on a rolling basis. Regulations implementing Core Principle 13 are found at CFTC Regulations 37.1301-1307.

SEF Core Principle 7 requires a SEF to establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the SEF, including those that are required to be cleared under section 2(h)(1). A SEF must establish minimum financial standards for its members, which at a minimum must be that members qualify as an ECP as defined in Section 1a(18) of the CEA, and must monitor its members to ensure that they remain ECPs. See CFTC Regulations 37.701-703.

SEF Core Principle 15 requires a SEF to designate a chief compliance officer to ensure compliance with the CEA and the rules and regulations issued under the CEA. See CFTC Regulation 37.1500.

**DCOs.** DCO Core Principle B, Financial Resources, requires a DCO to have, at a minimum, adequate financial, operational and managerial resources that are sufficient to meet its financial obligations to its clearing members notwithstanding the default by the clearing member creating the largest financial exposure for the DCO. Regulations implementing this Core Principle are found in CFTC Regulation 39.11. The Commission has additional regulations designed to implement the CEA and protect investors: participant and product eligibility, CFTC Regulation 39.12; risk management, CFTC Regulation 39.13; treatment of funds, CFTC Regulation 39.15. Of particular relevance, CFTC Regulation 39.12(b) provides that a DCO's participation requirements must require clearing members to have access to sufficient resources to meet obligations arising from participation in the DCO in extreme but plausible market conditions, and CFTC Regulation 39.12(c) provides that a DCO's participation requirements must require clearing members to have adequate operational capacity to meet obligations arising from participation in the DCO. In addition to the above, CFTC Regulations 39.33, 39.35 and 39.36, respectively, impose enhanced financial resources, default rules and procedures and risk management standards on SIDCOs and DCOs that elect to become subject to them. Finally, section 4d of the CEA requires FCMs and DCOs to segregate customer property. .

**RFAs.** Section 17(b)(3) of the CEA requires the rules of an RFA to provide that membership must be denied to certain firms and individuals, including those subject to an order by the CFTC suspending, denying or revoking registration. Section 17(b)(4) of the CEA requires that the RFA rules provide that applicants for membership conform with specific and appropriate standards with respect to the training, experience and such other qualifications as the RFA deems necessary or desirable, including the financial responsibility of members. Section 17(p) of the CEA further requires each RFA to establish rules that require the association to:

- Establish training standards and proficiency testing for persons involved in the solicitation of transactions, supervisors of such persons and all persons for which it has registration responsibilities, and a program to audit and enforce compliance with such standards;
- Establish minimum capital, segregation, and other financial requirements applicable to its members for which such requirements are imposed by the CFTC and implement a program to audit and enforce compliance with such requirements;
- Establish minimum standards governing sales practices of its members and persons associated therewith for transactions subject to provisions of the CEA; and
- Establish supervisory guidelines to protect the public interest relating to the solicitation of new futures and options accounts and make such guidelines applicable to those members determined to require such guidelines in accordance with standards established by the CFTC.

In addition, NFA and DCMs must monitor and enforce compliance with CFTC regulations establishing standards for intermediaries, such as CFTC minimum financial and reporting requirements, and requirements for the protection of customer funds and communications with customers pursuant to CFTC Regulations 1.52.

**Common to SROs.** CFTC Regulation 1.59 prohibits certain trading on material, inside information by SRO members and by members of SRO governing boards and committees. *See also* response to Principle 9, Question 4(b).

- (d) Submits to the regulator its rules and any amendments thereto, for review and/or approval, as the regulator deems appropriate, and ensures that the rules of the SRO are consistent with the public policy directives established by the regulator?

Yes.

**DCMs, SEFs, and DCOs.** Section 5c(c) of the CEA requires DCMs, SEFs, and DCOs to file with the Commission new products, new rules, and rule amendments. Under rules promulgated by the Commission, a DCM or SEF may list a new product by providing the CFTC with written certification that the product complies with the CEA and the Commission's regulations. *See* CFTC Regulation 40.2. The DCM or SEF may list the self-certified contract for trading no sooner than one full business day following receipt of the submission by the Commission. Alternatively, a DCM or SEF may request Commission approval of the new product. CFTC Regulation 40.3. DCMs, SEFs, and DCOs may self-certify to the Commission new rules and rule amendments and implement such new rules and rule amendments no earlier than 10 business days following receipt by the Commission of the submission. CFTC Regulation 40.6. Alternatively, DCMs, SEFs, and DCOs may voluntarily submit rules or rule amendments for Commission review and approval. CFTC Regulation 40.5. Amendments to terms and conditions of futures on agricultural commodities enumerated in Section 1a(4) of the CEA must be approved by the Commission if the amendments are material and would be applied to existing

positions. CFTC Regulation 40.4. There are also special certification procedures for SIDCOs that give the CFTC 60 days to review any proposed change to a SIDCO's rules, procedures, or operations that could materially affect, the nature or level of risks presented by the SIDCO. CFTC Regulation 40.10.

**RFAs.** Section 17(a)(2) of the CEA requires an applicant for RFA status to provide the CFTC with copies of its constitution, charter or articles of incorporation or association, along with all bylaws. Section 17(j) of the CEA states that an RFA must file with the CFTC copies of any changes or additions to the RFA rules. Section 17(j) further provides that the RFA may make any proposed change or addition effective ten days after the receipt of such a filing by the Commission unless the RFA requests that the Commission review and approve the submission or the Commission informs the RFA of its intention to do so. If the Commission decides that it will review the rules for approval, the Commission must determine whether such change or addition is consistent with the requirements of Section 17 of the CEA and is not in violation of any other provision of the CEA. If the Commission disapproves the change or addition as inconsistent with the CEA, the Commission must provide the RFA with notice and opportunity to be heard. Further, if the Commission does not approve or institute disapproval proceedings with respect to a rule within 180 days after the receipt of such a rule, or if the Commission does not conclude disapproval proceedings within one year after the receipt of such rule, the RFA may implement the submitted rule until the Commission concludes the disapproval process.

(e) Cooperates with the regulator and other domestic SROs to investigate and enforce applicable laws, regulations and rules?

Yes. The CEA and CFTC regulations establish an obligation on the SROs to cooperate with the CFTC and with other SROs to investigate and enforce applicable laws and regulations. SEFs, DCMs, and DCOs,<sup>72</sup> have SRO obligations under the CEA:

- SEF Core Principle 5 requires a SEF to have rules in place to provide the SEF with the ability to obtain any necessary information to perform any function required by the CEA.
- DCM Core Principle 2 requires a DCM to have rules in place to provide the DCM with the ability to obtain any necessary information to perform any function required by the CEA.
- DCOs have rule enforcement responsibilities under Core Principle H and certain SRO responsibilities under DCO Core Principle A of Section 5b of the CEA.

CEA Section 8(a)(1) provides that for the efficient execution of the provisions of the CEA, and in order to provide information for the use of Congress, the CFTC may make such investigations as it deems necessary to ascertain facts regarding the operations of boards of

<sup>72</sup> As noted in response to Principle 9, Question 1(a), DCOs act as member organizations and enforce rules of participant eligibility, etc. However, DCOs are not included in the definition of SRO. CFTC Regulation 1.3(ee) defines "self-regulatory organization" to mean a contract market (as defined in Regulation 1.3(h)), a SEF (as defined in Regulation 1.3(rrrr)), or a RFA under section 17 of the Act,

trade and other persons subject to the CEA. CEA Section 5b authorizes the CFTC to suspend or revoke the designation of any board of trade which fails or refuses to comply with any of the provisions of the CEA or any of the rules, regulations or orders issued by the CFTC thereunder.

The CFTC's rules contemplate cooperation among exchanges. As discussed above in response to Principle 9, Question 1(a), CFTC Regulation 1.52 authorizes any two or more DCM and RFA SROs to file with the CFTC a plan (e.g., the JAC's Joint Audit Agreement) for delegating to a DSRO the responsibility of monitoring and auditing for compliance with the minimum financial reporting and compliance requirements adopted by such SROs. Among other things, CFTC Regulation 1.52(d) also authorizes such SROs to establish programs among themselves to provide access to any necessary financial or related information.

Cooperation with other SROs is not required for authorization to act as an SRO, and participation in the JAC is not mandatory, however, all current DCM SROs and NFA do participate. As discussed above, under CFTC Regulation 1.52, SROs with FCM members in common may establish joint audit plans, and, pursuant to such plans, delegate the responsibility to audit and conduct financial surveillance of an FCM to one of the SROs as the DSRO. The Commission requires that DSROs ensure that each FCM is subject to an on-site examination within nine to 18 months of the "as of" date of the previous examination by the DSRO. The JAC has established uniform procedures for such on-site examinations.

3. Does the SRO:

(a) Have statutory delegation or other formal recognition from the Regulator?

Yes. See response to Principle 9, Question 1(a).

(b) Have MoUs or other arrangements in place in secure cooperation between it and the Regulator?

No. The obligation for an SRO to cooperate with the CFTC is statutory. In addition, enforceable Commission regulations implementing the SRO functions of registered entities ensure cooperation.

(c) Have its own rules which are enforced and whose non-compliance is appropriately sanctioned?

Yes. See response to Principle 9, Question 1(c).

(d) Where applicable, e.g., a mutual organization, assures a fair representation of members in selection of its board of directors and administration of its affairs?

Yes.

**DCMs.** DCM Core Principle 17 requires the governance arrangements of the board of trade be designed to permit consideration of the views of market participants.

DCM Core Principle 22 requires the board of trade, if a publicly-traded company, must endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of

qualified candidates.

DCM Core Principle 15 requires the board of trade to establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of contract market and any other persons with direct access to the facility. The Commission's Guidance in Part 38, Appendix B details:

- (1) A designated contract market should have appropriate eligibility criteria for the categories of persons set forth in the Core Principle that should include standards for fitness and for the collection and verification of information supporting compliance with such standards. Minimum standards of fitness for persons who have member voting privileges, governing obligations or responsibilities, or who exercise disciplinary authority are those bases for refusal to register a person under section 8a(2) of the Act. In addition, persons who have governing obligations or responsibilities, or who exercise disciplinary authority, should not have a significant history of serious disciplinary offenses, such as those that would be disqualifying under Commission Regulation 1.63. Members with trading privileges but having no, or only nominal, equity, in the facility and non-member market participants who are not intermediated and do not have these privileges, obligations, responsibilities or disciplinary authority could satisfy minimum fitness standards by meeting the standards that they must meet to qualify as "market participants." Natural persons who directly or indirectly have greater than a ten percent ownership interest in a DCM should meet the fitness standards applicable to members with voting rights.
- (2) The Commission believes that such standards should include providing the Commission with fitness information for such persons, whether registration information, certification to the fitness of such persons, an affidavit of such persons' fitness by the contract market's counsel or other information substantiating the fitness of such persons. If a contract market provides certification of the fitness of such a person, the Commission believes that such certification should be based on verified information that the person is fit to be in his or her position.

DCM Core Principle 16 requires the board of trade to establish and enforce rules to minimize conflicts of interest in the decision making process of the contract market and establish a process for resolving such conflicts of interest. The Commission's Guidance in Part 38, Appendix B specifies:

The means to address conflicts of interest in decision-making of a contract market should include methods to ascertain the presence of conflicts of interest and to make decisions in the event of such a conflict. In addition, the Commission believes that the contract market should provide for appropriate limitations on the use or disclosure of material non-public information gained through the performance of official duties by board members, committee

members and contract market employees or gained through an ownership interest in the contract market.

The Commission also includes Acceptable Practices in Appendix B to Part 38:

All DCMs bear special responsibility to regulate effectively, impartially, and with due consideration of the public interest, as provided for in Section 3 of the CEA. Under DCM Core Principle 15, they are also required to minimize conflicts of interest in their decision-making processes. To comply with this DCM Core Principle, contract markets should be particularly vigilant for such conflicts between and among any of their self-regulatory responsibilities, their commercial interests, and the several interests of their management, members, owners, customers and market participants, other industry participants, and other constituencies. Acceptable Practices for minimizing conflicts of interest must include the following elements:

(1) Board Composition for Contract Markets

- (i) At least thirty-five percent of the directors on a contract market's board of directors shall be public directors; and
- (ii) The executive committees (or similarly empowered bodies) shall be at least thirty-five percent public.

(2) Public Director

- (i) To qualify as a public director of a contract market, an individual must first be found, by the board of directors, on the record, to have no material relationship with the contract market. A "material relationship" is one that reasonably could affect the independent judgment or decision making of the director.
- (ii) In addition, a director shall not be considered "public" if any of the following circumstances exist:
  - (A) The director is an officer or employee of the contract market or a director, officer or employee of its affiliate. In this context, "affiliate" includes parents or subsidiaries of the contract market or entities that share a common parent with the contract market;
  - (B) The director is a member of the contract market, or a person employed by or affiliated with a member. "Member" is defined according to Section 1a(34) of the CEA and CFTC Regulation 1.3(q).



(C) The director, or a firm with which the director is affiliated, as defined above, receives more than \$100,000 in combined annual payments from the contract market, any affiliate of the contract market, or from a member or any person or entity affiliated with a member of the contract market. Compensation for services as a director does not count toward the \$100,000 payment limit, nor does deferred compensation for services prior to becoming a director, so long as such compensation is in no way contingent, conditioned, or revocable;

(D) Any of the relationships above apply to a member of the director's "immediate family," i.e., spouse, parents, children, and siblings.

(iii) All of the disqualifying circumstances described in subsection (2)(ii) shall be subject to a one-year look back.

(iv) A contract market's public directors may also serve as directors of the contract market's affiliate if they otherwise meet the definition of public director in this Section (2).

(v) A contract market shall disclose to the Commission which members of its board are public directors, and the basis for those determinations.

### (3) Regulatory Oversight Committee

(i) A board of directors of any contract market shall establish a Regulatory Oversight Committee ("ROC") as a standing committee, consisting of only public directors as defined in Section (2), to assist it in minimizing actual and potential conflicts of interest. The ROC shall oversee the contract market's regulatory program on behalf of the board. The board shall delegate sufficient authority, dedicate sufficient resources, and allow sufficient time for the ROC to fulfill its mandate.

(ii) The ROC shall:

(A) Monitor the contract market's regulatory program for sufficiency, effectiveness, and independence;

(B) Oversee all facets of the program, including trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to member firms (including ensuring compliance with financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations;



(C) Review the size and allocation of the regulatory budget and resources; and the number, hiring and termination, and compensation of regulatory personnel;

(D) Supervise the contract market's chief regulatory officer, who will report directly to the ROC;

(E) Prepare an annual report assessing the contract market's self-regulatory program for the board of directors and the Commission, which sets forth the regulatory program's expenses, describes its staffing and structure, catalogues disciplinary actions taken during the year, and reviews the performance of disciplinary committees and panels;

(F) Recommend changes that would ensure fair, vigorous, and effective regulation; and

(G) Review regulatory proposals and advise the board as to whether and how such changes may impact regulation.

#### (4) Disciplinary Panels

All contract markets shall minimize conflicts of interest in their disciplinary processes through disciplinary panel composition rules that preclude any group or class of industry participants from dominating or exercising disproportionate influence on such panels. Contract markets can further minimize conflicts of interest by including in all disciplinary panels at least one person who would qualify as a public director, as defined in subsections (2)(ii) and (2)(iii) above, except in cases limited to decorum, attire, or the timely submission of accurate records required for clearing or verifying each day's transactions. If contract market rules provide for appeal to the board of directors, or to a committee of the board, then that appellate body shall also include at least one person who would qualify as a public director as defined in subsections (2)(ii) and (2)(iii) above.

See Appendix B to Part 38 at

<http://www.cftc.gov/industryoversight/tradingorganizations/designatedcontractmarkets/index.htm>.

**SEFs.** SEF Core Principle 12 requires a SEF to establish and enforce rules to minimize conflicts of interest in its decision-making process and to establish a process for resolving the conflicts of interest. Additionally, the Commission requires that the Chief compliance officer resolve conflicts of interest. See CFTC Regulation 37.1501.

**DCOs.** DCO Core Principle O requires each DCO to have: (i) governance arrangements that are transparent to fulfill public interest requirements and to permit the consideration of the views of owners and participants; and (ii) fitness standards for directors, members, any individual or entity with direct access to the settlement or clearing activities of the DCO, and any party affiliated with such director, member, or entity.

Core Principle P requires each DCO to establish and enforce rules to minimize conflicts of interest in the decision making process and to establish a process to resolve conflicts of interest.

Core Principle Q requires each DCO to ensure that the composition of the governing board or committee of the DCO includes market participants.

In addition, Commission regulation 39.32 sets forth governance requirements for SIDCOs that are consistent with Principle 2 of the PFMI. For example, a SIDCO must have governance arrangements that clearly specify the roles and responsibilities of the board of directors and its committees, including the establishment of a clear and documented risk management framework, and that establish procedures for identifying, addressing, and managing conflicts of interest involving members of the board of directors. In addition, a SIDCO also must maintain policies to make certain that the performance of the board of directors and the performance of individual directors are reviewed on a regular basis.

**RFAs.** Section 17(b)(5) of the CEA requires that an RFA's rules assure a fair representation of its members in the adoption of any rule of the association, the selection of its officers and directors, and in all other phases of the administration of its affairs.

Section 17(b)(11) also requires that an RFA must provide for meaningful representation on the governing board of such an association a diversity of membership interests and provides that no less than 20 percent of the regular voting members of such board be comprised of qualified non-members or persons who are not regulated by such association.

Section 17(b)(12) requires that the RFA provide on all major disciplinary committees for a diversity of membership sufficient to ensure fairness and to prevent special treatment or preference for any person in the conduct of disciplinary proceedings and the assessment of penalties.

Consistent with the provisions of the CEA, CFTC Regulation 170.3 provides for the fair and equitable representation of members with respect to the governing board of the association. In particular, the Regulation provides that no single class or group of members may dominate or otherwise exercise disproportionate influence on the governing board. Additionally, CFTC Regulation 170.6 mandates a fair and orderly procedure with respect to disciplinary actions brought against association members or persons associated with members.

CFTC Regulation 1.64(b) requires that each SRO and RFA maintain rules that ensure that 20 percent of its governing board is comprised of knowledgeable individuals who are not members or employees of the SRO or RFA, who are not otherwise performing services for the SRO or RFA, and who are not officers, principals or employees of a firm that is a member of the SRO or RFA. Additionally, the SRO must be able to demonstrate that the board membership fairly represents the diversity of interests at that SRO and is otherwise consistent with the composition requirements of CFTC Regulation 1.64. CFTC Regulation 1.64(c)(1) mandates that each SRO must have in effect rules ensuring that at least one member of each major disciplinary committee or hearing panel is a person who is not a member of the SRO where the disciplinary action is being taken against a member of the SRO, a member of the governing board, or the member of a major disciplinary committee, or if the alleged or adjudicated rule violations involve manipulation or attempted manipulation, or conduct which directly results in financial harm to a non-member of a contract market. With respect to RFAs, CFTC Regulation 1.64(c)(3) requires that RFAs include persons representing membership interests other than that of the subject of the disciplinary proceeding being considered on each major disciplinary committee or hearing panel thereof. Further, Section 17(k) of the CEA provides that the CFTC is authorized to abrogate any rule of an RFA if, after notice and opportunity for hearing, it appears to the CFTC that such abrogation is necessary or appropriate to assure fair dealing by the members of the association, to assure a fair representation of its members in the administration of its affairs, or effectuate the purposes of the CEA. The CFTC also may alter or supplement RFA rules, after notice and hearing. Section 17(c) of the CEA provides that the CFTC may, after notice and opportunity for hearing, suspend the registration of an RFA if it finds that the rules thereof do not conform to the requirements of the CFTC.

CFTC Regulation 1.69 requires that a member of an SRO's governing board, disciplinary committee or oversight panel must abstain from voting on any matter and from deliberating on the same where that member is a named party in interest; is an employer, employee, or fellow employee of a named party in interest; is associated with a named party in interest through a broker association; has significant, ongoing business relationship with a named party in interest; or has a family relationship with the named party in interest. Moreover, each member of the SRO's governing board, disciplinary committee, or oversight panel must disclose to the appropriate SRO staff whether such relationships exist. The SRO must establish procedures for determining whether a member of the SRO's governing board disciplinary committee or oversight panel is subject to a conflict restriction in any matter involving a named party in interest based on information provided by the member and any other source of information reasonably available to the SRO. Under CFTC Regulation 1.69(b)(2), if a member of an SRO's governing board, disciplinary board or oversight board has a direct and substantial financial interest in the result of the vote based upon either exchange or non-exchange position that could reasonably be affected by the action, such member must abstain from deliberations and voting regarding the same. Pursuant to that regulation, the member must also disclose such interest to SRO staff and the SRO must have

appropriate procedures in place to evaluate the conflict.

Among other requirements enumerated in Section 17 of the CEA and Part 170, an RFA must:

- Assure fair and equitable representation of the views and interests of all association members;
- Impose dues equitably among all members, and may not be structured in a manner constituting a barrier to entry of any person seeking to engage in commodity-related business;
- Establish and maintain a program for the protection of customers, including the adoption of rules to protect customers and customer funds and to promote fair dealing with the public;
- Provide a fair and orderly procedure with respect to disciplinary actions brought against association members or persons associated with members;
- Provide a fair and orderly procedure for processing membership applications and for affording any person to be denied membership an opportunity to submit evidence in response to the grounds for denial; and
- Demonstrate its capacity to promulgate rules and to conduct proceedings that provide a fair, equitable and expeditious procedure, through arbitration or otherwise, for the voluntary settlement of a customer's claim or grievance brought against any member or any employee of a member.

Section 17(a) of the CEA requires that an applicant to become an RFA, as part of the application process, must submit to the CFTC a registration statement in such form as the CFTC may prescribe. CFTC Regulation 170.11 provides that the applicant must file with the CFTC a letter requesting registration as an RFA, as well as, the constitution, charter or articles of incorporation of the association, the bylaws of the association, any other rules, resolutions, or regulations of the association corresponding to the aforementioned documents, a detailed description of the association's organization, membership, and rules of procedure, and a detailed statement of the association's capability to comply with the provisions of Section 17 of the CEA and Part 170 of the CFTC regulations. Pursuant to CFTC Regulation 170.12, the review of such registration statement has been delegated by the Commission to the Director of the Division of Swap Dealer and Intermediary Oversight ("DSIO"). Following such review, the Commission may by order grant the registration if the requirements are satisfied or, after appropriate notice and opportunity to be heard, deny such registration if the application is deficient.

(e) Avoid rules that may create anti-competitive situations as defined in the Explanatory Note?

Yes. Section 15 of the CEA requires the CFTC to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA in, among other things, issuing any order or in approving any rule of a contract market or a registered futures association. CFTC Regulation 170.9 requires that an applicant to become an RFA must

demonstrate, among other things, that the association will promote fair and open competition among its members and will conduct its affairs consistent with the public interest to be protected by the antitrust laws.

DCM Core Principle 19 provides that unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall not—(A) adopt any rule or take any action that results in any unreasonable restraint of trade; or (B) impose any material anticompetitive burden on trading on the contract market.

Appendix B to Part 38 of the CFTC's regulations provides the following Guidance:

An entity seeking designation as a contract market may request that the Commission consider under the provisions of Section 15(b) of the CEA any of the entity's rules, including trading protocols or policies, and including both operational rules and the terms or conditions of products listed for trading, at the time of designation or thereafter. The Commission intends to apply Section 15(b) of the CEA to its consideration of issues under this Core Principle in a manner consistent with that previously applied to contract markets.

See Appendix B to Part 38 at

<http://www.cftc.gov/industryoversight/tradingorganizations/designatedcontractmarkets/index.htm>.

**SEFs.** SEF Core Principle 11 provides that unless necessary or appropriate to achieve the purposes of the Act, the SEF must not (a) adopt any rules or take any actions that result in any unreasonable restraint of trade; or (b) impose any material anticompetitive burden on trading or clearing.

Appendix B to Part 37 provides Guidance similar to the DCM guidance.

**DCOs.** DCO Core Principle N provides that unless necessary or appropriate to achieve the purposes of the Act, a DCO shall not adopt any rule or take any action that results in any unreasonable restraint of trade, or impose any material anticompetitive burden on the contract market.

(f)	Avoid using the oversight role to allow any market participant unfairly to gain an advantage in the market?
	<p>Yes.</p> <p>DCM Core Principle 4, Prevention of Market Disruption, provides that the board of trade shall have the capacity and responsibility to prevent market manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.</p> <p>DCM Core Principle 12, Protection of Market Participants, provides that the board of trade shall establish and enforce rules to protect market participants from abusive trade practices committed by any party acting as an agent for the participants and to promote fair and equitable trading. Core Principle 12 would also apply to prohibit abusive practices by the DCM itself.</p> <p>DCM Core Principle 16, Conflicts of Interest, provides that a board of trade shall establish and enforce rules to minimize conflicts of interest in the decision making process of the contract market. The Guidance to Part 38, Appendix B (discussed above in Principle 9, Question 3(d)), includes managing such conflicts through the use of a ROC of the Board of Directors, as well as maintaining a certain number of Public (disinterested) directors.</p> <p>SEF Core Principle 4, Monitoring of Trading and Trade Processing, requires a SEF to establish and enforce rules or terms and conditions defining or specifications detailing trading procedures to be used in entering and executing orders traded on or through the facilities of the SEF, procedures for trade processing of swaps on or through the SEF and monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance and disciplinary practices and procedures, including methods for conduction real-time monitoring of trading and comprehensive and accurate trade reconstructions.</p> <p>SEF Core Principle 12, Conflicts of Interest, requires a SEF to establish and enforce rules to minimize conflicts of interest in its decision making process and to establish a process for resolving conflicts of interest. See response to Principle 9, Question 2(c).</p> <p>DCO Core Principle P, Conflicts of Interest, requires each DCO to have and enforce rules to minimize conflicts of interest in the decision making process of the DCO and establish a process to resolve such conflicts.</p>
	<i>Oversight</i>
4.	Does the regulator:
(a)	Have in place an effective on-going oversight program of the SRO, which may include:
(i)	inspection of the SRO;

(ii)	periodic reviews;
(iii)	reporting requirements;
(iv)	review and revocation of SRO governing instruments and rules; and
(v)	the monitoring of continuing compliance with the conditions of authorization or delegation.
<p>Yes, to all of the above. The CFTC's regulatory scheme is based upon the assumption of self-regulatory responsibilities by its registrants following their registration under applicable provisions of the CEA and by an RFA following registration under Section 17 of the CEA. Each registrant must show compliance with Core Principles to obtain registration and maintain compliance with Core Principles to retain registration.</p> <p>DCM Core Principle 2, Compliance with Rules, requires DCMs to monitor and enforce compliance with the rules of the contract market, including access requirements, the terms and conditions of any contracts to be traded and rules prohibiting abusive trading practices on the contract market.</p> <p>DCM Core Principle 10, Trade Information, requires a DCM to maintain rules and procedures to provide for the recording and safe storage of all identifying trade information for purposes of assisting in the prevention of customer and market abuses and providing evidence of any violations of the rules of the contract market.</p> <p>DCM Core Principle 18, Recordkeeping, requires a DCM to maintain records of all activities related to the business of the contract market in a form and manner acceptable to the Commission for a period of at least 5 years.</p> <p><b><u>CFTC Rule Enforcement Program</u></b></p> <p>The CFTC's rule enforcement program for DCMs generally encompasses the review of exchange market surveillance, audit trail, trade practice surveillance, disciplinary, and dispute resolution programs.</p> <p>DMO's Compliance Branch conducts periodic reviews (about every two to three years) of each DCM's ongoing compliance with Core Principles through the self-regulatory programs operated by the exchange in order to enforce its rules, prevent market manipulation and customer and market abuses, and ensure the recording and safe storage of trade information. These reviews are known as rule enforcement reviews ("RERs").</p> <p><u>Objectives.</u> The Compliance Branch staff typically reviews a one-year target period and, depending on the Core Principles covered, thoroughly examines a DCM's audit trail reviews, trade practice and market surveillance investigations, investigation logs, hedge exemptions,</p>	

surveillance systems, compliance manuals, summary fine schedules, disciplinary files, settlement agreements, and arbitration files. Staff also conducts on-the-record interviews with a DCM's compliance officials. The Compliance Branch's findings, any deficiencies identified, or recommendations for improvement are included in a report presented to the Commission, and the Commission votes on whether to accept the report. The report is publicly released and published on the Commission's website and also sent to the DCM. Although a DCM may not fully agree with the Commission staff's findings, responses from DCMs, which are typically required within 30 days, usually explain how the DCM intends to correct deficiencies or implement staff's recommendations, if any. Because RER reports are public, deficiencies or recommendations for one DCM invariably leads to all DCMs with the same identified shortfall taking timely corrective action. Such corrective action usually includes modifying compliance procedures and/or adopting or modifying existing rules.

As discussed above, periodic RERs normally examine a DCM's audit trail, trade practice surveillance, disciplinary, and dispute resolution programs for compliance with the relevant DCM Core Principles, which include DCM Core Principle 10 (Trade Information) and DCM Core Principle 18 (Recordkeeping), with respect to audit trail programs (*see also* CFTC Regulations 38.550-553 and 38.950-951); DCM Core Principle 2 (Compliance with Rules) and DCM Core Principle 12 (Protection of Market Participants), with respect to trade practice surveillance programs (*see also* CFTC Regulations 38.150-160 and 38.650-651); DCM Core Principle 13 (Disciplinary Procedures), with respect to disciplinary programs (*see also* CFTC Regulations 38.700-712); and DCM Core Principle 14 (Dispute Resolution), with respect to dispute resolution programs (*see also* CFTC Regulations 38.750-751). Since the last FSAP report in 2010, the Compliance Branch has not detected any diminution in the self-regulatory efforts among the demutualized DCMs. As part of the analysis in conducting RERs for all of the DCMs, the Compliance Branch evaluates whether the DCM maintains sufficient compliance staff and resources to ensure that it can conduct effective audit trail reviews, trade practice and market surveillance, real-time monitoring (*see* CFTC Regulation 38.155), and to promptly prosecute possible rule violations within the disciplinary jurisdiction of the DCM (*see* CFTC Regulation 38.701). Additionally, with respect to audit trail reviews, market surveillance and trade practice RERs, the Compliance Branch evaluates the overall adequacy of the reviews or investigations conducted by the DCMs (*see* CFTC Regulations 38.158 and 38.553). With respect to disciplinary RERs, staff evaluates whether the sanctions imposed by the DCM are commensurate with the violations committed and clearly sufficient to deter recidivism or similar violations by other market participants (*see* CFTC Regulation 38.710).

Other periodic RERs usually examine a DCM's market surveillance program for compliance with DCM Core Principle 4, Prevention of Market Disruption (*see also* CFTC Regulations 38.250-258), and DCM Core Principle 5, Position Limitations or Accountability (*see also* CFTC Regulations 38.300-301). The Compliance Branch can also conduct horizontal RERs of the compliance of multiple exchanges in regard to particular Core Principles.



In 2013, DMO completed a total of five RERs, including a market surveillance RER of CME and CBOT.

<http://www.cftc.gov/ucm/groups/public/@iodcms/documents/file/lercmeccbot072613.pdf>

The most recent RER completed by DMO consisted of a review of the trade practice surveillance program for OneChicago, LLC and the report was issued in April 2014.

<http://www.cftc.gov/ucm/groups/public/@iodcms/documents/file/rerocx040714.pdf>

For further information, see <http://www.cftc.gov/industryoversight>.

It is anticipated that DMO's Compliance Branch will conduct RERs for a SEF after a SEF obtains permanent registration.

### **CFTC Audit Program**

**Review of Exchange Financial and Sales Practice Compliance Programs.** DCM Core Principle 11—Financial Integrity of Contracts, requires a DCM to establish and enforce rules providing for the financial integrity of any contracts traded on the contract market, and rules to ensure the financial integrity of any FCMs and IBs and the protection of customer funds.

**Objectives.** CFTC staff examines the design and implementation of an exchange's financial and sales practice compliance program for a target period. In addition to assessing the overall effectiveness of such programs, staff's reviews are also intended to identify specific deficiencies or areas that could be improved or enhanced.

As discussed above, all current DCMs, SROs, and NFA participate in a joint audit program under the auspices of the JAC, which must meet the requirements of Commission Regulation 1.52. Those requirements include, among other things, that the program be separately evaluated by an "examination expert" at least once every three years, and that a report containing the content and any related responses to the findings of the examination be provided to the CFTC.

CFTC staff also may conduct limited scope examinations of selected registrants from time to time.

The CFTC market surveillance program is structured to detect and prevent price manipulation in futures and option markets and compliance with Commission regulations and rules. A principal goal of market surveillance is to spot adverse situations in these markets and to pursue appropriate remedial actions, in coordination with the involved exchange, to avoid market disruption. To accomplish these objectives, the market surveillance staff must determine when a trader's position in a futures market becomes so large relative to other market factors that the trader is capable of causing prices to diverge from legitimate supply and demand conditions. The surveillance staff regularly collects and analyzes daily data concerning overall supply and

demand conditions and cash market price data, cash and future prices and price relationships, and the size of hedgers' and speculators' positions in the futures market. Additionally, surveillance staff also issues Special Calls for participant portfolio data including cash trading, physical trades and all derivatives and structured products.

At the heart of the CFTC's market surveillance system is a surveillance staff developed application that combines the large trader reporting system with transaction data and large swaps position data. In order to identify potentially disruptive futures positions, staff uses its reporting system to collect and analyze data on large trader positions in all commodities and related reported positions. Further, surveillance staff access SDRs to link other related positions to futures and options data. Reportable positions—daily reports of futures positions above specified levels set for reporting purposes—are obtained from FCMs, clearing members and foreign brokers. Exchanges also provide the daily positions that each clearing member is carrying in each futures and options contract on each underlying commodity.

Because traders frequently carry futures positions through more than one FCM and because individuals sometimes control, or have a financial interest in more than one account, the CFTC routinely collects information that enables its CFTC staff to aggregate related accounts for use by DMO surveillance staff. FCMs must file a form which identifies each new account with reportable positions for each futures contract. In addition, if a trader's position reaches a reportable level, the trader may be required to file a more detailed identification report to identify accounts and reveal any relationships that may exist with other accounts or traders.

An additional monitoring mechanism allows surveillance analysts to investigate further the positions of large traders by instituting a "special call," which requires a trader to report their futures and option positions with all brokerage firms, or their cash market or OTC positions. The trader may be required to give information on his or her trading and delivery activity. Special calls also may be used to examine cash market positions and commitments in relation to futures market positions to access the economic rationale of the trader's overall activities. The CFTC thus has the authority and techniques to investigate and discover the identities of the true account owners and controllers of large positions, whether domestic or foreign and understand their market activities including physical, swaps and futures.

On a daily basis, staff in DMO's Market Compliance Section reviews details of transactions at each exchange. Additionally, DMO staff periodically observes trading activity on the floor of each exchange (for the exchanges that still have open outcry trading) and discusses potential issues of concern with compliance staff at the exchange.

Importantly, the CEA's Core Principles applicable to DCOs require each DCO to maintain and enforce rules that address, among other things, the adequacy of financial resources, participant and product eligibility, risk management, settlement procedures, treatment of funds, default rules and procedures, rule enforcement, system safeguards, reporting to the CFTC, recordkeeping, public information, information sharing and antitrust concerns. The Division of

Clearing and Risk (“DCR”) routinely conducts examinations of registered DCOs pursuant to applicable CFTC regulations.

In addition, CFTC risk surveillance staff monitors the risk posed to and by DCOs, clearing members, and market participants, including market risk, liquidity risk, credit risk, and concentration risk. Relevant margin and financial resources are included within this monitoring program. CFTC staff regularly conducts back-testing to review margin coverage at the product level and follows up with the relevant clearing house regarding exceptional results. Independent stress testing of portfolios is conducted regularly. The independent stress tests often lead to individual trader reviews and/or FCM risk reviews. Traders and FCMs that have a higher risk profile are then reviewed during the Commission’s on-site review of a clearing house’s risk management procedures. In addition, CFTC risk surveillance staff also coordinates with other domestic and foreign regulators on matters of common jurisdictional interest. The CFTC also participates in implementation monitoring programs related to the PFMI.

### **NFA Oversight**

The CFTC has general oversight responsibility for all NFA functions (as an RFA) to ensure compliance with the CEA and Commission regulations. The CFTC also monitors NFA for enforcement of its own rules and bylaws.

As an RFA, NFA is considered an SRO and, as noted above, must, in carrying out its financial audit and surveillance activities, comply with the requirements of the CFTC’s regulatory program.

In addition to the FCMs for which it is responsible under the joint audit program, NFA is responsible for regulatory compliance matters with respect to its member IBs, except for IBs that are guaranteed by an FCM that does not have NFA as its DSRO. NFA also is responsible for sales practice surveillance over all member CPOs and CTAs. NFA’s oversight of CPOs and CTAs also extends to review of annual reports and disclosure documents filed pursuant to Part 4 of the CFTC’s regulations consistent with the CFTC’s delegation of the same,<sup>73</sup> and the conduct of examinations of such firms on a periodic basis.<sup>74</sup>

The CFTC ensures compliance by NFA with its self-regulatory obligations and DCMs with Core Principles by conducting periodic reviews of NFA’s compliance programs and Core Principle oversight reviews of DCMs. NFA oversight reviews focus on the specific program responsibilities of NFA, including review of the financial and sales practice compliance

<sup>73</sup> 62 Fed. Reg. 52,088 (Oct. 6, 1997); 67 Fed. Reg. 77,470 (Dec. 18, 2002).

<sup>74</sup> See Article III of NFA’s Articles of Incorporation at <http://www.nfa.futures.org/nfamanual/NFAManual.aspx>.

programs for registered intermediaries, as well as review of NFA's programs for arbitration, registration and fitness, and disciplinary actions.

In the implementation of such reviews, staff meets with NFA or DCM staff and reviews program materials and databases, evaluates procedures, and performs reviews of samples of NFA's or the DCM's files to determine whether the SRO's procedures are consistent with its regulatory obligations, whether the SRO has properly executed its program, and that the files contain sufficient documentation. The results of these reviews are presented to the CFTC and reported back to NFA or the DCM. Consecutive reviews of the same program may focus on a particular aspect of the program in question, including following up on recommendations made in prior reviews.

As an example of the CFTC's oversight of NFA, the CFTC oversees NFA's registration program through frequent contacts between staff members on specific matters, as well as formal reviews by CFTC staff of the operation of NFA's program. These reviews have two general purposes: (1) to determine whether NFA's written program properly addresses all relevant CFTC regulations and guidelines; and (2) to confirm that the execution of the written program is complete and is consistently applied in accordance with NFA's written program. Following the completion of the review, the CFTC generates a report detailing its findings with respect to the reviewed program, including recommendations for correction of problems or improvements. CFTC staff also attends regular meetings of the JAC to deal with examination or supervision issues that arise among the SROs.

The CFTC conducted a review of NFA's registration program in 2010, and within the past ten years has conducted reviews of NFA's programs for CPO and CTA compliance, telemarketing supervision, FCM and IB financial reports, disciplinary actions, and arbitration. CFTC staff also has conducted oversight reviews of all the SROs during the same time period.

Section 17(k) of the CEA provides that the CFTC is authorized to abrogate any rule of an RFA if it appears to the CFTC that such abrogation is necessary or appropriate to assure fair dealing by the members of the association, to assure a fair representation of its members in the administration of its affairs, or to effectuate the purposes of the CEA. The CFTC also may alter or supplement RFA rules, after notice and hearing. Section 17(c) of the CEA provides that the CFTC may suspend the registration of an RFA if it finds that the rules thereof do not conform to the requirements of the CFTC. Under Section 5c(d) of the CEA, if the CFTC determines that a DCM (or other registered entity such as a DCO) is violating Core Principles it will provide notice to the entity in writing of such determination and afford the registered entity an opportunity to make appropriate changes to come into compliance, after which the CFTC may take further steps, including suspension/revocation of certification.

(b)	Retain full authority to inquire into matters affecting the investors or the market?
	<p>Yes. Section 8 of the CEA allows the Commission to make such investigations as it deems necessary to ascertain the facts regarding the operations of the boards of trade and other persons subject to the provisions of the CEA. This includes the authority to investigate the market conditions of commodities, including the supply and demand for such commodities. With regards to NFA, pursuant to Section 17 of the CEA, the CFTC broadly retains full authority over all matters undertaken by an RFA.</p> <p><i>See also</i> response to Principle 9, Question 2(a).</p>
(c)	Take over or support an SRO's responsibilities where the powers of an SRO are inadequate for inquiring into or addressing particular misconduct or allegations of misconduct or where a conflict of interest necessitates it?
	<p>Yes. Section 8a(9) of the CEA authorizes the CFTC to direct a registered entity, (e.g., a DCM, DCO, SEF, and SDR), whenever it has reason to believe that an emergency exists, to take such action as in the CFTC's judgment is necessary to maintain or restore orderly trading in or liquidation of any futures contract.</p> <p>Section 8a(7) of the CEA authorizes the CFTC to alter or supplement the rules of a registered entity under certain circumstances. In order for the CFTC to take such action under Section 8a(7), the CFTC must first make the appropriate request to a registered entity in writing specifying the desired rule change and, after appropriate notice and hearing, determine that the registrant did not make the requested changes and that such changes are necessary or appropriate for the protection of persons producing, handling, processing, or consuming any commodity traded for future delivery on such registered entity, or the product or byproduct thereof, or for the protection of traders or to insure fair dealing in commodities traded on such registered entity.</p> <p>Enforcement can support the SRO responsibilities where their powers are inadequate for inquiring (e.g., where the investigation requires subpoenaing third party records) or sanctioning (e.g., in the case of a recidivist) by initiating its own investigation or enforcement proceeding. Also, the CEA gives the CFTC authority in some cases to enforce some exchange rules, for example, pursuant to Section 4a(e) of the CEA, violations of exchange speculative limit rules approved by the Commission are subject to enforcement action by the Commission.</p> <p><b>RFAs.</b> Section 17(k) of the CEA provides that the CFTC is authorized to abrogate any rule of an RFA if, after notice and opportunity for hearing, it appears to the CFTC that such abrogation is necessary or appropriate to assure fair dealing by the members of the association, to assure a fair representation of its members in the administration of its affairs, or to effectuate the purposes of the CEA. The CFTC also may alter or supplement RFA rules, after notice and hearing.</p> <p>Section 17(c) of the CEA provides that the CFTC may, after notice and opportunity for hearing, suspend the registration of an RFA if it finds that the rules thereof do not conform to the requirements of the CFTC.</p>

	<p>Additionally, where the SRO does not have the ability to obtain necessary information (e.g., where the investigation requires subpoenaing third party records) or impose sanctions (e.g., in the case of a recidivist), DOE will “support” the SRO responsibilities. Also, as noted elsewhere, the CEA give the Commission the authority to enforce exchange rules (e.g., violations of exchange speculative position limit rules approved by the Commission are subject to enforcement action by the Commission).</p>
	<p><i>Professional Standards Similar to those Expected of a Regulator</i></p>
5.	<p>Does the regulator, the law or other applicable regulation require the SRO to follow similar professional standards of behaviour as would be expected of a regulator:</p>
	<p>a) On matters relating to confidentiality and procedural fairness?</p>
	<p>Yes.</p> <p><b>Confidentiality.</b> The CEA requires SROs to maintain the confidentiality of material nonpublic information and information obtained from the CFTC in connection with the exercise of their self-regulatory responsibilities. <i>See also</i> response to Principle 9, Question (1)(a).</p> <p>Section 9(e)(1) of the CEA makes it a felony for any person who is an employee, member of the governing board, or member of any committee of a board of trade, registered entity, SDR, or RFA, in violation of a regulation issued by the CFTC, willfully and knowingly . . . to disclose for any purpose inconsistent with the performance of such person’s official duties as an employee or member, any material nonpublic information obtained through special access related to the performance of such duties.</p> <p>CFTC Regulation 1.59(d)(ii), prohibits employees, governing board members, committee members and consultants of SROs, from disclosing material non-public information obtained through their position with the SRO for any purpose that is not consistent with the performance of their duties with respect to the SRO, and requires that SROs and RFAs promulgate rules that prohibit governing board members, committee members and consultants from disclosing material, non-public information obtained as a result of the performance of such person’s official duties.</p> <p>An exchange or RFA must maintain the confidentiality of information disclosed to it by the CFTC, except in limited circumstances. The CFTC is authorized under CEA Section 8a(6) to communicate to the proper committee or officer of any contract market, RFA or SRO the full facts concerning any transaction or market operation, including the names of parties, that in the judgment of the CFTC disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors, or which is necessary or appropriate to effectuate the purposes of the CEA. However, Section 8a(6) provides that any information furnished by the CFTC under this authority “shall not be disclosed by such contract market, registered futures association, or SRO except in any self-regulatory action or proceeding.” <i>See also</i> CFTC Regulation 140.72, delegating such authority to certain Staff.</p>

An exchange must maintain the confidentiality of, and is prohibited from disclosing to third parties, information developed by the exchange in an investigation. A contract market is required by CEA Section 8c(2) to make public its findings in any exchange disciplinary proceeding pursuant to its internal rules (that is, a proceeding to suspend, expel, discipline or deny access to an exchange member), but may not disclose the evidence for its findings except to the person suspended, expelled, disciplined or denied access to the exchange or to the CFTC. The CFTC has clarified that its delegation of registration and disqualification functions to NFA permits exchanges to disclose to NFA all evidence underlying exchange disciplinary actions.<sup>75</sup>

**Procedural Fairness.** DCM Core Principle 12, Protection of Markets and Market Participants, requires a DCM to establish and enforce rules designed to promote fair and equitable trading and to protect the market and market participants from abusive practices. DCMs should have rules prohibiting conduct by intermediaries that is fraudulent, noncompetitive, unfair, or an abusive practice in connection with the execution of trades and a program to detect and discipline such behavior. The DCM should have methods and resources appropriate to the nature of the trading system and the structure of the market to detect trade practice abuses. Additionally, Core Principle 13 requires the DCM establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violated the rules of the board of trade.

In addition, various CFTC regulations impose standards of procedural fairness on SRO programs.

DCM Core Principle 2, Compliance with Rules, requires DCMs to monitor and enforce compliance with the rules of the contract market, including access requirements, the terms and conditions of any contracts to be traded and rules prohibiting abusive trading practices on the contract market. A DCM must also have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the contract market.

In much the same way as DCM Core Principle 2, SEF Core Principle 2, Compliance with Rules, requires a SEF to establish and enforce trading, trade processing, and participation rules that will deter abuses. Additionally, under Core Principle 2, the SEF must have rules governing the operation of the facility, including rules specifying trading procedures to be used, in entering and executing orders traded or posted on the facility including block trades.

Section 17(b)(9) of the CEA requires that an RFA have rules that provide for a fair and orderly procedure with respect to the disciplining of members and persons associated with members for the denial of membership. Each person subject to such a proceeding must be given an opportunity to be heard and must be informed of the specific grounds for

<sup>75</sup> See CFTC Interpretative Letter No. 00-56 (April 13, 2000).



discipline. Further, a record must be kept and, in the event that disciplinary action is taken, specific grounds supporting such action must be provided to the disciplined entity.

In addition, an RFA, pursuant to CFTC Regulation 170.6, must conduct proceedings in a manner consistent with fundamental due process. Similarly, CFTC Regulation 170.8, requires RFAs to demonstrate a capability to promulgate rules and conduct proceedings which provide a fair, equitable and expeditious procedure, through arbitration or otherwise, for the voluntary settlement of customers' claims or grievances brought against any member of the association or any employee thereof.

The CFTC has delegated to NFA responsibility for processing and granting applications for registration of various categories of registrants under the CEA. The various delegation orders have imposed procedural conditions and/or were accompanied by the approval of NFA rules that contained procedural protections. For example, in 1985 the CFTC approved rules adopted by NFA pursuant to which NFA would conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any applicant for registration or registrant who may be subject to a statutory disqualification under Sections 8a(2) through 8a(4) of the CEA and for whom NFA has been authorized to perform the CFTC's registration functions. The procedures embodied in those NFA rules closely parallel those specified by the CFTC in Subpart C of Part 3 of its regulations. Specifically, NFA adopted the CFTC's standards defining the scope of evidence that may be presented by the applicant or registrant to challenge allegations of statutory disqualification, as well as the standards to be followed by the party reviewing the matter and making determinations. Wherever NFA has modified those procedures, the CFTC's review concluded that the modifications would not adversely affect the rights of applicants and registrants.<sup>76</sup>

b) On the appropriate use of information obtained in the course of the SRO's exercise of its powers and discharge of its responsibilities?

Yes. See response to Principle 9, Questions 1(a) and 5(a). Furthermore, Section 9(e)(2) of the CEA makes it a felony for any person who is an employee, member of the governing board, or member of any committee of a board of trade, registered entity, swap data repository, or RFA, in violation of a regulation issued by the CFTC, willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon, or swaps, on the basis of, or willfully and knowingly to disclose for any purpose of such person's official duties as an employee or member, any material nonpublic information obtained through special access related to the performance of such duties.

CFTC Regulation 1.59(d)(i) prohibits any employee, member of the governing board or member of any committee of an SRO from trading for such person's own account, or for or on behalf of any other account, in any commodity interest based on any material, nonpublic

<sup>76</sup> See 50 FR 34885, 34886 (Aug. 28, 1985).



information obtained through special access related to the performance of such person's official duties. CFTC Regulation 1.59(d)(2) similarly prohibits any person from trading for such person's own account on the basis of any material, nonpublic information that such person knows was obtained in violation of 1.59(d)(i).	
<i>Conflicts of Interest</i>	
6.	Does the regulator, the law or other applicable regulation assure that potential conflicts of interest at the SRO are avoided or appropriately managed?
	Yes. See responses to Principle 9, Questions 2(b), 2(f) and 3(d).

**PRINCIPLES RELATING TO ENFORCEMENT (10-12)**

**Principle 10      The Regulator should have comprehensive inspection, investigation and surveillance powers.**

**Key Questions**

1. Does the regulator have the power to inspect a regulated entity's business operations, including its books and records:

(a) Without giving prior notice?

Yes. Registrants are required to make certain filings with and disclose certain information to the Commission, and keep a variety of books, records, and other information on their futures and options and swaps related activities open to inspection by Commission representatives, as set forth below. These filings, disclosures, books and records are required to be readily available to the Commission and DOJ without compulsory process or notice.

All books and records required to be kept, by either the CEA or the Commission's regulations, must be retained for five years and must be "readily accessible" during the first two years of that period. See CFTC Regulation 1.31(a). A copy of any such book or record must be furnished to any authorized representative of the Commission, upon request and at the expense of the person who is required to keep it. In lieu of furnishing a copy, the person may give the representative the original book or record for reproduction by the Commission. In either event, the copies or originals must be provided promptly. CFTC Regulation 1.31(a).

The record-keeping obligations of various Commission registrants and other market participants are in the following provisions of the CEA and/or the CFTC's regulations:<sup>77</sup>

- FCMs, IBs, floor brokers and floor traders - Sections 4f and 4g of the CEA; CFTC Regulation 1.32 (segregated account, daily computation and record); 1.33 (monthly and confirmation statements), CFTC Regulation 1.34 (monthly point balance); CFTC Regulation 1.35 (records of cash commodity, futures and option transactions); CFTC Regulation 1.36 (record of securities and property received from customers and options customers); CFTC Regulation 1.37 (customer's account identification record); and CFTC Regulation 1.40 (crop, market information letters, reports).
- CTAs and CPOs - Section 4n of the CEA; CFTC Regulations 4.23 and 4.33.
- DCMs - Section 5(d)(18) of the CEA; CFTC Regulations 38.950-951; *see also* Part 16 of Commission Regulations.
- SEFs - Section 5h(f)(10) of the CEA; CFTC Regulations 37.1000-1001.
- FBOTs - CFTC Regulation 48.8(a).
- DCOs - Section 5b(c)(2)(J) of the CEA; CFTC Regulation 39.20.
- Options dealers - Commission Regulation 32.7.
- Traders holding reportable futures or options positions on DCMs - Section 4i of the CEA; Commission regulations in Parts 17, 18 and 19.
- SDs and MSPs - Section 4s(g) of the CEA; CFTC Regulations 23.200-23.205.

<sup>77</sup> *See also* CFTC Regulation 45.2.

- SDRs - Section 21(c)(3) of the CEA; Commission Regulation 49.12.
- RFEDs – Section 2(c) of the CEA; Commission Regulations 1.31, 5.10 and 5.14.

The CFTC's access to records includes nonpublic and public information held by individuals and entities regulated by the CFTC (FCMs, floor brokers, floor traders, IBs, CTAs, CPOs, SDs, MSPs, APs, leverage transaction merchants, SDRs, SEFs, DCMs RFEDs and FBOTs) including customer information and to information about persons that do business with such regulated individuals and entities.

(b)	On-site?
	Yes. CFTC Regulation 1.31(a) provides that all books and records required to be kept by the CEA and or by Commission regulation must be open to inspection by any representative of the Commission or the DOJ.
2.	Does the regulator have the power to obtain books and records and request data or information from regulated entities without judicial action, even in the absence of suspected misconduct:
(a)	In response to a particular inquiry?
	<p>Yes. Pursuant to the Commission's inspection powers, the Commission can obtain information from registered individuals and entities without judicial action:</p> <ul style="list-style-type: none"> <li>a. Recordkeeping for persons registered with the Commission (other than Registered SDs and MSPs). Sections 4f, 4g, and 4n of the CEA and Commission Regulations 1.12, 1.14, 1.18, 1.25, 1.31, 1.33, 1.34, 1.35, 1.37, 1.55, 3.12, 4.23, 4.33, 32.7, 33.7 require persons registered with the Commission to keep records and reports (including electronic data) of transactions and positions in commodities for future delivery on any board of trade in the United States or elsewhere. Registered Persons must also keep books and records pertaining to such transactions (including daily trading records, customer records, and information concerning volume of trading) in the form and manner and for such period of time required by the Commission. All such books and records must be made available for inspection by any representative of the Commission or DOJ.</li> <li>b. Recordkeeping for Members of a Registered Entity. Commission Regulations 1.31, 1.35 and 1.37, require members of a registered entity to keep records and reports of transactions and positions in commodities for future delivery and options on any board of trade in the United States or elsewhere, as well as cash commodities. Members of a registered entity must also keep books and records pertaining to such transactions (including daily trading records, customer records, and information concerning volume of trading) in the form and manner and for such period of time required by the Commission. All such books and records must be made available for inspection upon request by any representative of the Commission or DOJ. Additionally, Commission Regulation 1.40 requires each member of a registered entity to furnish to the Commission certain reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity.</li> <li>c. Recordkeeping for Traders who hold or control a Reportable Futures or Options Position. Section 4i of the CEA and Commission Regulations 1.31 and 18.05 require traders who hold or control a reportable futures or options position (as defined in Commission Regulation 15.00(p)) to keep books and records showing, among other things, all details concerning all positions and transactions in the commodity, and in its products and by-products, whether executed through a contract for future delivery, an option contract or a cash contract, and whether such contract is executed through a board of trade, an exempt commercial market, an exempt board of trade, a foreign board of trade or an over-the-counter transaction. All such books and records, and pertinent information concerning the underlying positions, transactions or activities, must be made available for inspection in a form acceptable to the Commission upon request by any</li> </ul>

representative of the Commission.

- d. Recordkeeping for Registered SDs and MSPs. Sections 4r and 4s of the CEA and Commission Regulations 1.31, 23.201, 23.202, 23.203, 23.504, 23.505, 23.606, 45.2, 46.2 require SDs and MSPs to keep records of all activities relating to their business with respect to swaps. The records must be readily accessible throughout the life of the swap and for two years following its termination, and retrievable by the SD or MSP within three business days during the remainder of the retention period. Each SD and MSP must make available for disclosure to and inspection by the Commission and its prudential regulator, as applicable, all information required by, or related to, the CEA and Commission Regulations, including: (i) the terms and condition of its swaps; its swaps trading operations, mechanisms, and practices; financial integrity and risk management protections relating to swaps; and (iv) any other information relevant to its trading in swaps. Such information shall be made available promptly, upon request, to Commission Staff and the staff of the applicable prudential regulator, at such frequency and in such manner as is set forth in the CEA, Commission regulations, or the regulations of the applicable prudential regulator.
- e. Recordkeeping by Swaps Participants who are not registered. Section 4r of the CEA and Commission Regulations 1.31, 45.2, 46.2 require non-SD/MSP counterparties to keep records with respect to each swap in which they are a counterparty. Required records must be kept by all swap counterparties throughout the existence of a swap and for five years following termination of the swap. In the case of a non-SD/MSP counterparty, the records must be retrievable by the counterparty within five business days throughout the retention period.
- f. Recordkeeping for Large Physical Commodity Swaps Traders. Sections 4r and 4t of the CEA and Commission Regulations 1.31, 1.35, 20.6, 45.2, 46.2 require clearing organizations, reporting entities, and persons with positions in paired swaps above a certain futures equivalent threshold to keep records of transactions in paired swaps or swaptions as well as the methods used to convert paired swaps or swaptions into futures equivalents. Additionally, Regulation 20.6 requires every person with greater than 50 all-months-combined futures equivalent positions on a gross basis in paired swaps or swaptions on the same commodity to keep books and records for transactions resulting in such swaps positions and, among other things, the cash commodity underlying such positions. The recordkeeping duties imposed by Regulation 20.6 are in accordance with the requirements of Regulation 1.31. Furthermore, Regulation 20.6(d) requires that all books and records required to be kept under Regulation 20.6 shall be furnished upon request to the Commission along with any pertinent information concerning such positions, transactions, or activities.

(b) On a routine basis?

Yes. CFTC Staff carries out periodic, routine inspections and audits of SROs to ensure that those SROs are carrying out their obligations under the CEA and Commission regulations. The Commission's regulations impose a duty in the first instance on DCMs and SEFs to establish a continuing affirmative action program to secure compliance with, among other things, the CEA and with exchange or facility rules and by-laws. CFTC Regulation 1.52

	<p>provides direction on how an SRO must conduct its financial and sales practice programs over FCMs and IBs. A requirement under Regulation 1.52 is that SROs are required to conduct periodic on-site examinations of certain registrants.</p> <p>Under this approach of self-regulation, the CFTC assesses the effectiveness of the SRO's compliance programs. Staff also conducts selected reviews of registrants, including horizontal review and "for cause" examinations.</p>
3.	Does the regulator have the power to conduct or supervise surveillance of trading activity on its authorized exchanges and regulated trading platforms?
	Yes. CFTC Staff carries out periodic routine inspections and audits of DCMs to ensure that they are carrying out their obligations under the CEA and Commission regulations. The Staff will conduct such routine audits and inspections on SEFs once a SEF has obtained permanent registration status.
4.	Does the regulatory system have record-keeping and record retention requirements for regulated entities?
	Yes. See responses to Principle 10, Question 1.
5.	Are regulated entities required:
	(a) To maintain records concerning client identity?
	<p>Yes. FCMs, IBs and members of a contract market must keep a record which shows for each commodity futures or options account the true name and address of the person for whom such account is carried or introduced and the principal occupation or business of such person. They also must keep a record showing the name of any other person guaranteeing such account or exercising any trading control over the account.<sup>78</sup> If an account becomes reportable, certain additional information is required to be obtained and filed with the Commission. See, e.g., CFTC Regulation 17.01 (requires the reporting of the identity of the owner of the account and its registration; the legal organization, and principal business/occupation of the owner of the account; the name and location of all persons having a ten percent or more financial interest in the account; and the names and addresses of all persons with trading authority, if there are five or fewer such persons); see also CFTC Regulation 18.04 (the Commission may require the reporting of the name, address, registration and principal business and occupation of the reporting trader; the name and address and business phone of each person who controls the trading of the reporting trader; and the names and locations of guarantors and persons with a financial interest of 10 percent or more in the reporting trader or its accounts).</p> <p>SDs and MSPs must obtain a record showing the true name and address of each counterparty whose identity is known to the SD or MSP prior to the execution of a swap transaction, the principal occupation or business of such counterparty, as well as the name and address of any other person guaranteeing the performance of such counterparty and any person exercising any control with respect to the positions of the counterparty.<sup>79</sup></p>

<sup>78</sup> CFTC Regulation 1.37(a)(1).

<sup>79</sup> CFTC Regulation 23.402(c).

A customer identification program (CIP) regulation issued jointly by the CFTC and FinCEN pursuant to the Bank Secrecy Act<sup>80</sup> also requires that certain registrants obtain identification and verification information on their customers. An FCM's or IB's CIP procedures must enable it to form a reasonable belief that it knows the true identity of each customer. Commission Regulation 42.2 directs entities to comply with the CIP requirements.

NFA has also incorporated the CIP and know-your-customer (KYC) requirements within its membership rules. NFA's KYC requirements are set forth in NFA Compliance Rule 2-30. This Rule requires NFA members to obtain the true name, address, and principal occupation or business of each customer that is a natural person; the customer's current estimated annual income and net worth; age; and an indication of the customer's previous investment and futures trading experience.

---

<sup>80</sup> Public Law 91-508, codified as amended at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314; 5316-5332.

(b) To maintain records that permit tracing of funds and securities in and out of brokerage and bank accounts related to securities transactions?

Yes. Commission regulations require that there be a complete record, or audit trail, of the entry and execution of all orders for transactions in commodity interest and related cash or forward transactions. For example, each FCM, IB, RFED, and member of a DCM or SEF must keep all records, data, and memoranda, including copies of statements of purchase and sale, which have been prepared in the course of its business of dealing in commodity interest and related cash or forward transactions.<sup>81</sup> Additionally, an FCM or IB receiving an oral order from a customer must immediately prepare a written record of the order including account identification and an order number, and the order must be time-stamped within one minute of its receipt.<sup>82</sup> A member of a DCM receiving an oral order must do the same, and must also time-stamp the order when the report of its execution is made.<sup>83</sup>

In addition, an FCM must maintain records for each commodity and option customer and foreign futures or options customer showing any customer funds carried with the FCM and a detailed accounting of all charges and credits to the customer account.<sup>84</sup> These comprehensive record creation, retention and reporting requirements ensure that all transactions in futures and options can be reliably documented and reconstructed, and are readily available to investigating authorities. The Commission's authority to obtain all the foregoing records is the same as set forth in response to Principle 10, Question 1.

FCMs and IBs are also covered financial institutions that are required to file suspicious activity reports under the Bank Secrecy Act.<sup>85</sup> FCMs are equivalent to brokers and dealers in the securities industry. IBs are similar to FCMs in that they both solicit and accept orders for the purchase or sale of any commodity for future delivery on U.S. futures exchanges. They are distinguishable from FCMs in that, unlike FCMs, IBs are not permitted to accept money or other property to margin, guarantee, or secure any trades or contracts.

Under the Bank Secrecy Act, FCMs and IBs also must establish due diligence programs that include appropriate, specific, risk-based and, where necessary, enhanced policies,

<sup>81</sup> On May 22, 2014, the Division of Swap Dealer and Intermediary Oversight ("DSIO") and the Division of Market Oversight ("DMO") granted limited relief with respect to the requirement that Covered Members (i.e., members of a DCM or SEF that are not registered or required to be registered with the Commission) keep digital or electronic written communications, specifically with respect to keeping text messages. In addition, the relief extends to the requirement that Covered Members keep written records of all transactions relating to its business of dealing in commodity interests and related cash or forward transactions in a form and manner identifiable and searchable by transaction. However, Covered Members will continue to be required to keep all other written records required by Regulation 1.35(a). The relief provided by the Divisions will remain effective until the effective date of any final Commission action, including without limitation, a rulemaking, an order, or a determination not to take action. See CFTC Letter 14-72.

<sup>82</sup> CFTC Regulation 1.35(a-1)(1).

<sup>83</sup> CFTC Regulations 1.35(a-1)(2) and (4).

<sup>84</sup> CFTC Regulations 1.33, 1.35(a), and (b).

<sup>85</sup> 31 C.F.R. 1026.320.



procedures and controls that are reasonably designed to detect and report, on an ongoing basis, any known or suspected money laundering activity conducted through or involving any correspondent account established, maintained, administered, or managed by such covered financial institution in the United States for a foreign financial institution.<sup>86</sup> They must maintain due diligence programs that are reasonably designed to detect and report known or suspected money laundering or suspicious activity conducted through or involving any private banking account that is established, maintained, administered, or managed in the United States by such financial institution for a non-U.S. person.<sup>87</sup> FCMs and IBs are also required to file a report concerning a transaction (or series of related transactions) in excess of \$10,000 in currency.<sup>88</sup>

All of these Bank Secrecy Act requirements are intended to minimize potential money laundering and terrorist financing; however, they also set forth compliance obligations as well as recordkeeping and reporting requirements that complement the Commission's efforts to ensure that futures and options transactions can be reliably documented and reconstructed.

Finally, as discussed in response to Principle 10, Question 1, the CEA, CFTC regulations and NFA rules also impose comprehensive record creation, retention and reporting requirements to ensure that all transactions can be reliably documented and reconstructed, and are readily available to investigating authorities.

6. Does the regulator have the authority to determine or have access to the identity of all clients of regulated entities?

Yes. As indicated in response to Principle 10, Question 5(a), registrants must keep a record of the identity of the owners, controllers and principals of accounts carried by or introduced to or by them. The Commission's authority to obtain all the foregoing records is the same as set forth in the response to Principle 10, Question 1.

As also indicated in response to Principle 10, Question 5(a), FCMs and IBs are required by the CIP regulation to have procedures to identify and verify the identity of customers.<sup>89</sup> An FCM's or IB's CIP procedures must enable it to form a reasonable belief that it knows the true identity of each customer. Under the CIP regulation, FCMs and IBs must retain all identification information for five years after an account is closed and verification information for five years after the record is made.<sup>90</sup> Further, FinCEN has delegated to the Commission its authority to examine FCMs and IBs for compliance with BSA requirements. This delegation provides the Commission with the authority to obtain the identification and verification information collected under the CIP regulation.

<sup>86</sup> 31 C.F.R. 1026.610, 1026.630.

<sup>87</sup> 31 C.F.R. 1026.620.

<sup>88</sup> 31 C.F.R. 1026.311, 1026.312.

<sup>89</sup> 31 C.F.R. 1026.220.

<sup>90</sup> 31 C.F.R. 1026.220(3)(iii).

7. Where a regulator out-sources or otherwise grants inspection or other regulatory enforcement authority to a third party, including a SRO:

(a) Does the regulator supervise the outsourced functions of the third party?

Yes. The CFTC's supervisory approach to outsourcing to a RFA (in connection with Part 9 as noted below) or allowing registered entities (DCMs and SEFs) to outsource regulatory oversight to a DSRO or RFA is addressed in the context of (1) reviews of an exchange's application for initial designation as a "contract market" or temporary registration as a SEF and (2) ongoing supervision, including RERs, which assess a DCM's (or SEF's) ongoing compliance with the Core Principles that govern the operation and conduct of such a regulated market.

Commission Regulation 38.154(a) permits a DCM to use a RFA or another registered entity to provide services to assist in complying with the Core Principles. Any DCM that chooses to utilize a regulatory service provider must ensure that its regulatory service provider has the capacity and resources necessary to provide timely and effective regulatory services, including adequate staff and automated surveillance systems. A DCM remains responsible for the performance of any regulatory services received from a third party, for compliance with the DCM's obligations under the CEA and Commission regulations, and for the regulatory service provider's performance on its behalf. CFTC Regulation 38.154(a). In supervising the quality of regulatory services provided on its behalf, Commission Regulation 38.154(b) requires the compliance staff of the DCM to hold regular meetings with the regulatory service provider to discuss ongoing investigations, trading patterns, market participants, and any other matters of regulatory concern. A DCM also must conduct periodic reviews of the adequacy and effectiveness of services provided on its behalf. Such reviews must be documented carefully and made available to the Commission upon request. CFTC Regulation 38.154(b). Commission Regulation 38.154(c) requires the DCM to retain exclusive authority in decisions involving the cancellation of trades, the issuance of disciplinary charges against members or market participants, and the denials of access to the trading platform for disciplinary reasons. A DCM may also retain exclusive authority in other areas of its choosing. Further, a DCM must document any instances where its actions differ from those recommended by its regulatory service provider, including the reasons for the course of action recommended by the regulatory service provider and the reasons why the DCM chose a different course of action. CFTC Regulation 38.154(c).

With respect to SEFs, Commission Regulation 37.204(a) permits a SEF to contract with a registered futures association, another registered entity, or the Financial Industry Regulatory Authority for the provision of services to assist in complying with the Act and Commission regulations thereunder, as approved by the Commission. Any SEF that chooses to contract with a regulatory service provider must ensure that such provider has the capacity and resources necessary to provide timely and effective regulatory services, including adequate staff and automated surveillance systems. A SEF must at all times remain responsible for the performance of any regulatory services received, for compliance with the SEF's obligations under the Act and Commission regulations, and for the regulatory service provider's performance on its behalf. CFTC Regulation 37.204(a). Commission Regulation 37.204(b) requires a SEF to retain sufficient compliance staff to supervise the quality and effectiveness of the regulatory services provided on its behalf.

Compliance staff of the SEF must hold regular meetings with the regulatory service provider to discuss ongoing investigations, trading patterns, market participants, and any other matters of regulatory concern. A SEF must also conduct periodic reviews of the adequacy and effectiveness of services provided on its behalf. Such reviews must be documented carefully and made available to the Commission upon request. CFTC Regulation 37.204(b). Commission Regulation 37.204(c) requires the SEF to retain exclusive authority in all substantive decisions made by its regulatory service provider, including, but not limited to, decisions involving the cancellation of trades, the issuance of disciplinary charges against members or market participants, and denials of access to the trading platform for disciplinary reasons. A SEF must also document any instances where its actions differ from those recommended by its regulatory service provider, including the reasons for the course of action recommended by the regulatory service provider and the reasons why the SEF chose a different course of action. CFTC Regulation 37.204(c).

**Background Note.** The Commission noted in the preamble discussion concerning the final DCM rules that with respect to Commission Regulation 38.154, the Commission has previously described acceptable “contracting” and “delegating” arrangements for the performance of Core Principle functions by third-parties.<sup>91</sup> The Commission promulgated Regulation 38.154 to clarify its previous guidance on such arrangements. In particular, the Commission stated that it does not draw substantive distinctions between “contracting” and “delegating” arrangements as they pertain to Core Principle compliance functions. Regardless of the term by which a DCM may refer to its utilization of a third party, the Commission believes that the same regulatory requirements are applicable for purposes of Part 38. For purposes of Part 38, the Commission refers to such arrangements as “delegation.” The Commission also noted that DCMs must remain responsible for carrying out any function delegated to a third party, and that DCMs must ensure that the services received will enable the DCM to remain in compliance with the CEA’s requirements.

Also, Section 5c(b) of the CEA allows a DCM to comply with any applicable Core Principle through delegation of any relevant function to a RFA or another registered entity that is not an electronic trading facility. A DCM that delegates a function remains responsible for carrying out the function.

<sup>91</sup> 77 Federal Register 36627 (June 19, 2012).

(b)	Does the regulator have full access to information maintained or obtained by the third party?
	Yes. The CFTC would have access whether the function is characterized as a “delegation” or “outsourcing.” If an SRO “delegated” a function, the CFTC would have regulatory power with respect to both the SRO and the “registered entity” to which the SRO delegated a function. If an SRO “outsourced” a function, the CFTC would have power over the SRO.
(c)	Can the regulator cause changes/improvements to be made in the third parties’ processes?
	<p>Yes. The Commission may cause changes/improvements to be made to the third parties’ processes through exercise of its powers over the registered entities. CFTC Staff conducts ongoing supervision that addresses the continuing compliance of DCMs and SEFs with the CEA and Commission regulations.</p> <p>Note that whether there may be a concern with respect to access to information or a need to “cause changes or improvements” in the third parties’ processes CFTC Staff requires a written regulatory services agreement “for purposes of determining compliance with Core Principles.” Among other things, Staff inquires into the ability of the exchange to monitor and supervise the service provider (as required by the CFTC) and as part of this process would raise any issues arising from such services agreement.</p>
(d)	Is the third party subject to disclosure and confidentiality requirements that are no less stringent than those applicable to the regulator?
	Yes. Any delegation can only be made to another registered entity. An SRO that “outsourced” a function remains responsible for the exercise of all SRO responsibilities and, to the extent the matter involves a confidential matter, would be required to ensure that the entity carrying out the outsourced function maintains any required confidentiality.

<b>Principle 11 The Regulator should have comprehensive enforcement powers.</b>	
<b>Key Questions</b>	
1.	<p>Does the regulator or other competent authority within the jurisdiction have the investigative and enforcement power to enforce compliance with the laws and regulations relating to securities activities?</p> <p>Yes. The CFTC has comprehensive investigative and enforcement powers under the CEA. The CFTC enforces compliance with the laws and regulations relating to futures, options on futures, and swaps by conducting investigations and bringing enforcement actions where appropriate. The CFTC has broad authority to investigate actual or potential violations of the CEA and Commission regulations and to determine the scope of its investigations and the persons and entities subject to investigation.</p> <p>Section 8(a)(1) authorizes the Commission to make such investigations as it deems necessary to ascertain the facts regarding the operations of boards of trade and other persons subject to the provisions of this chapter. Further, Section 6(c) of the CEA provides:</p> <p style="padding-left: 40px;">For the purpose of securing effective enforcement of the provisions of this chapter, for the purpose of any investigation or proceeding under this chapter, ... any member of the Commission or any Administrative Law Judge or other officer designated by the Commission ... may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.</p> <p>Finally, Part 11 of the Commission's regulations, Relating to Investigations, sets forth the rules applicable to investigatory proceedings conducted by the Commission to determine whether there have been violations of the CEA or the Commission's regulations. Commission Regulation 11.2 sets out the authority of the DOE to carry out Section 6(c) and conduct the investigations, which includes obtaining evidence through voluntary statements and submissions, through exercise of inspection powers over registrants, and through the issuance of subpoenas. In addition, Part 11 of the Commission's regulations provides witnesses certain procedural protections, such as the right to have a lawyer present when testifying and to review the Commission's order of investigation. A witness can also assert his or her Fifth Amendment protection against self-incrimination. CFTC investigations are non-public.</p> <p>Where the investigation indicates such a violation, the Director of DOE shall recommend an appropriate civil enforcement action, either administrative or in Federal court. See response to Principle 11, Question 2.</p>

2.	Does the regulator or other competent authority within the jurisdiction have the following powers:
(a)	Power to seek court or judicial orders, to refer matters for civil proceedings or to take other action to ensure compliance with regulatory, administrative, and investigative powers?
(b)	Power to impose effective, proportionate and dissuasive administrative sanctions?
(c)	Power to initiate criminal proceedings or to refer matters for criminal prosecution?
(d)	Power to order the suspension of trading in securities or to take other appropriate actions?
<p>Yes, to all of the above. Under Sections 6(c), 6(d) and 6c of the CEA, the CFTC has the authority to file a civil enforcement action in Federal district court or an administrative enforcement proceeding in an administrative tribunal to ensure compliance with the CEA and Commission regulations.</p> <p>The relief available in Federal district court is composed of the remedies that Congress expressly authorized Federal courts to grant under Section 6c of the CEA and the Federal courts' general equitable powers. Thus, the Commission's Federal court enforcement actions may seek any or all of the following types of relief when appropriate:</p> <ul style="list-style-type: none"> <li>• Preliminary and permanent injunctions barring future violations of the CEA and CFTC regulations and enforcing compliance with the CEA and regulations;</li> <li>• An ex parte order (i) prohibiting any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records or other documents, (ii) prohibiting any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property, or (iii) appointing a temporary receiver to administer such restraining order;</li> <li>• Imposition of civil monetary penalties;</li> <li>• Appointment of a receiver to administer a defendant's estate;</li> <li>• An order directing that a defendant disgorge ill-gotten gains;</li> <li>• An order directing that a defendant make restitution to persons who have sustained losses proximately caused by such violations in the amount of such losses;</li> <li>• An order rescinding all contracts entered into by a defendant with any customer;</li> <li>• An order directing that the defendant make an accounting (in a form and by an individual or firm approved by the Commission and the court) of the defendant's estate; and</li> <li>• An award of pre-judgment interest on any sums to be disgorged or paid in restitution.</li> </ul> <p>All complaints initiating an administrative action pursuant to Sections 6(c) and 6(d) of the CEA are conducted under the Commission's Rules of Practice contained in Part 10 of the Commission's regulations. The following sanctions are available in administrative actions</p>	

and all administrative complaints notify respondents of these possible sanctions that can be imposed if liability is found:

- An order prohibiting a respondent from trading on or subject to the rules of any contract market and requiring all contract markets to refuse such person all trading privileges thereon for such period as may be specified in the order;
- An order suspending (for a period of not more than six months), revoking or restricting a respondent's registration with the Commission;
- An order assessing civil monetary penalties against a respondent, not to exceed \$140,000 per violation (\$1 million for manipulation);
- An order directing that a respondent make restitution to customers of damages proximately caused by the respondent's violations; and
- An order directing a respondent to cease and desist from violating the CEA or CFTC regulations in an administrative action brought pursuant to Section 6(d).

As set forth above, the Commission has a myriad of tools at its disposal to deter and remediate violations of the CEA. The interplay of many factors influences the particular mix of sanctions imposed in any given matter. The Commission bases its analysis of an appropriate sanction in a matter on the gravity of the offense, the specific circumstances of each violation and violator, the deterrent and remedial effect of each package of sanctions and penalties imposed in analogous cases. The Commission has identified a variety of factors relevant to ascertaining the gravity of an offense, including whether the violation involves core provisions of the Act, like fraud and manipulation, and whether the violator acted willfully. The Commission may also consider the impact of the case on Commission resources as a result of cooperation or settlement. These factors provide guidance for all parties in the Commission's adjudicatory process.

In addition to other substantive violations of the CEA, as set forth in Section 6(c), if an individual or firm named in a subpoena refuses to comply with its terms, the Commission may apply to a Federal district court to enforce the subpoena. The Commission has delegated its authority to file a subpoena enforcement action to the Director of DOE.

In pertinent part, Section 6(c) of the CEA provides as follows:

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation . . . is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the . . . officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question.

If the subpoenaed party refuses to comply with the district court's order enforcing the subpoena, the court can punish the party for contempt.

<p>The CFTC has the power to refer matters for criminal prosecution to DOJ, but cannot independently initiate such actions. Alleged criminal violations of the CEA pursuant to Section 9 of the CEA or violations of other Federal laws that involve commodity futures trading are frequently referred to DOJ for prosecution.</p> <p>The CFTC also works closely with criminal and civil state agencies, particularly members of the North American Securities Administrators Association, Inc. and offices of State attorney generals. Pursuant to statutory authority under the CEA, States can join as co-plaintiffs in CFTC Federal court injunctive enforcement actions and have done so in over 80 matters since afforded that authority.</p>	
3.	Does the regulator or other competent authority have the investigative and enforcement power to require and to obtain from any person, including third party entities and individuals (whether regulated or unregulated), that are either involved in relevant conduct or who may have information relevant to a regulatory or enforcement inquiry/investigation:
(a)	Contemporaneous records sufficient to reconstruct all securities and derivatives transactions, including records of all funds and assets transferred into and out of bank and brokerage accounts relating to those transactions?
(b)	Records for securities and derivatives transactions that identify:
(i)	The client:
(1)	Name of the account holder?
(2)	Person authorized to transact business?
(ii)	The amount purchased or sold?
(iii)	The time of the transaction?
(iv)	The price of the transaction?
(v)	The individual and the bank or broker and brokerage house that handled the transaction?
(c)	Information located in its jurisdiction identifying persons who beneficially own or control non-natural persons organized in its jurisdiction?
(d)	Statements or testimony?
(e)	Any other information including documents and bank records?
<p>Yes, to all of the above. Through its inspection power, the CFTC can obtain information from registered individuals and entities, large traders and market members, without judicial action. See response to Principle 10, Question 2. Sections 4g and 4n of the CEA provide the CFTC with the authority to require certain reports and books and records be maintained by FCMs, IBs, floor brokers, floor traders, CPOs and CTAs. These books and records must be open at all times to inspection by any representative of the CFTC or DOJ. DCMs under Part</p>	



38 are also required to keep records of all activities relating to its business and subject such books and records to inspection by the CFTC and DOJ. Pursuant to Sections 5h(f)(5), and 5b(2)(K), all records required to be maintained by SEFs and DCOs respectively, must be provided to the Commission upon request. Under Section 4i of the CEA, all records required to be maintained by large traders are open at all times to inspection by any representative of the CFTC or DOJ. See responses to Principle 10, Question 1 and Principle 12, Question 1. Similarly, the books and records of SDRs are also subject to inspection upon request by any representative of the CFTC and DOJ. In addition, the general recordkeeping provision set forth in CFTC Regulation 1.31 provides that all books and records required to be kept and maintained by the CEA or the CFTC Regulations are subject to inspection by any representative of the CFTC or the DOJ.

The CFTC's access to records includes nonpublic and public information held by individuals and entities regulated by the CFTC (DCOs, FCMs, floor brokers, floor traders, IBs, CTAs, CPOs, RFEDs, SEFs, SDs, MSPs, SDRs, APs, leverage transaction merchants, agricultural trade option merchants and exchanges) including customer information and to information about persons that do business with such regulated individuals and entities.

In addition to its inspection powers, the CFTC has broad subpoena powers and may obtain information from any individual or entity, whether registered or not, in connection with possible violations of the CEA and Commission regulations. Section 6(c) of the CEA authorizes the CFTC to subpoena the production of documentary and testimonial evidence "from any place in the United States, any State, or any foreign country or jurisdiction."

4.	Can private persons seek their own remedies for misconduct relating to the securities laws?
	<p>Yes. Section 22 of the CEA permits private rights of action under certain circumstances. Section 22(a) permits, under certain circumstances, private damage actions against anyone other than a SRO who violates, or wilfully aids and abets a violation, of the CEA. Section 22(b) establishes, under certain circumstances, a private damage remedy against SROs and their officials, which in bad faith refuse to enforce their own rules, or enforce their own rules in violation of the CEA, and cause monetary loss to the plaintiff.</p> <p>Section 14 of the CEA permits anyone complaining of a violation of the CEA or the CFTC's rules to apply to the CFTC for an order awarding damages caused by the violation. These so-called reparations procedures offer a variety of methods to resolve claims, including a voluntary procedure based on the submission of written documents, a summary procedure for claims of less than \$30,000 where evidence is submitted in writing and an oral hearing may be held by telephone and a formal procedure before an Administrative Law Judge. See CFTC Regulations Part 12 relating to Reparations procedures.</p> <p>The CFTC also requires each DCM to adopt rules which provide for the fair and equitable procedure through arbitration or otherwise for the settlement of customer's claims and grievances against any member or employee of the contract market.<sup>92</sup> The use by customers of the dispute resolution mechanism established by contract markets is voluntary.<sup>93</sup></p> <p>Section 17(a)(10) of the CEA requires that any RFA provide a fair, equitable, and expeditious procedure through arbitration or otherwise for the settlement of customers' claims and grievances against any member or employee thereof.</p>
5.	Where an authority other than the regulator must take enforcement or other corrective action, can the regulator share information obtained through its regulatory or investigation activities with that authority?
	Yes. Sections 8(a)(2) and 12(a) specifically authorize the Commission to request the assistance of and cooperate with other state and Federal agencies, including DOJ, in the conduct of its investigations.
6.	Where the regulator is unable to obtain information in its jurisdiction necessary to an investigation is there another authority that can obtain the information?
	Yes. To the extent the information is available from another Federal or State agency, such as a State securities regulator, the SEC or FERC, the CFTC may obtain this information by seeking access to the public and non-public information in that agency's files. The CFTC cooperates with other domestic enforcement authorities through explicit statutory authorization, formal MOUs and informal arrangements to combat fraud and other illegal practices that could harm customers or threaten market integrity.

<sup>92</sup> CFTC Regulation 180.

<sup>93</sup> CFTC Regulation 180.3.

7.	If yes: Are there respective arrangements between the regulator and the other domestic authority as regards the respective exchange of information in place?
	The only limitation on the sharing of information is in the context of information that is obtained by DOJ in a criminal investigation through the grand jury process. Under the Federal Rules of Criminal Procedure, DOJ cannot share this information with the CFTC, though it can share any information obtained through means other than the grand jury.

**Principle 12 The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.**

**Key Questions**

*Detecting Breaches*

1. Is there an effective system of inspection in place whereby the regulator carries out inspections:

(a) On a routine periodic basis?

Yes. See response to Principle 9, Question 4.

The Commission has a direct examinations program for DCOs and DCMs, and it will soon directly examine SEFs and SDRs. However, the agency does not at this time have the resources to place full-time staff on site at these registered entities, unlike a number of other financial regulators that have on-the-ground staff at the firms they oversee. DMO and DCR collectively have a total of 47 examinations positions in FY 2014.

The Commission today performs only high-level, limited scope reviews of the nearly 100 FCMs holding over \$218 billion in customer funds and 102 swap dealers. The Commission currently has a staff of only 38 to examine these firms, and to review and analyse, among other things, over 1,200 financial filings and over 2,400 regulatory notices each year.

Although it has begun legal compliance oversight of SDs and MSPs, the Commission has been able to allocate only 13 employees for this purpose. The Commission itself does not conduct routine on-site direct inspections of intermediaries, but it does conduct such examinations for cause or to test the quality of the DSRO's work. In FY 2014, the Commission overall will have 95 staff positions dedicated to examinations of the thousands of different registrants that should be subject to thorough oversight and examinations. The Commission's regulatory scheme is based upon the assumption of self-regulatory responsibilities by the DCMs, SROs and continuing oversight by the Commission of the exercise of those responsibilities. See response to Principle 9.

The Commission's Staff periodically reviews the programs and procedures adopted by each DCM to ensure compliance with the relevant Core principles and to assess the effectiveness of those rules and procedures.

The operational integrity of exchanges is addressed through the CFTC's periodic RERs (typically every year for the larger exchanges and about every two to three years for the smaller exchanges) that broadly address audit trail, market surveillance, trade practice surveillance, and/or disciplinary programs. DMO's Compliance Section conducts periodic reviews of each DCM's ongoing compliance with Core Principles through the self-regulatory programs operated by the exchange in order to enforce its rules, prevent market manipulation and customer and market abuses, and ensure the recording and safe storage of trade information.

On some occasions, the Compliance Section may conduct horizontal RERs of the compliance of multiple exchanges in regard to particular Core Principles.

Under the CEA, SROs also are required to develop programs to assess whether FCMs and IBs are in compliance with exchange and Commission minimum financial and related reporting requirements. Each examination must assess the FCM's compliance with minimum capital and customer funds protection requirements.

Under Regulation 1.52, SROs with FCM members in common may establish joint audit plans, and pursuant to such plans delegate the responsibility to audit and conduct financial surveillance of an FCM to one of the SROs as the DSRO. As discussed in response to Principle 9, all DCM SROs and NFA are participants in the JAC and divide up DSRO responsibility for monitoring the financial condition and rule compliance of joint members. The Commission requires DSROs to ensure that each FCM is subject to an on-site examination within nine to 18 months of the "as of" date of the previous examination by the DSRO. The JAC has established uniform procedures for such on-site examinations.

In addition, CFTC risk surveillance staff regularly monitors the risk posed to and by DCOs, clearing members, and market participants, including market risk, liquidity risk, credit risk, and concentration risk. Relevant margin and financial resources are included within this monitoring program. CFTC staff regularly conducts back-testing to review margin coverage at the product level and follows up with the relevant clearing house regarding exceptional results. Independent stress testing of portfolios is conducted regularly. The independent stress tests may lead to individual trader reviews and/or FCM risk reviews. Traders and FCMs that have a higher risk profile are then reviewed during the Commission's on-site review of a clearing house's risk management procedures. In addition, CFTC risk surveillance also coordinates with other domestic and foreign regulators on matters of common jurisdictional interest.

(b) Based upon a risk assessment?

See response to Question 1(a). With respect to testing the work performed by DSROs, Staff conducts risk-based reviews that focus on five areas of an SRO's supervisory program: financial stability, customer protection, risk management, market moves and operational capabilities.

(c) On a non-periodic basis in response to intelligence received (e.g. investor complaints and tips and complaints from other sources)?

On a daily basis, staff in DMO's Surveillance staff reviews details of transactions at each exchange by using the Commission's automated surveillance system. The Commission is currently in the process of significantly upgrading this system to enhance the Commission's ability to detect trade practice violations, including wash trading and trading ahead. Additionally, DMO staff periodically observes trading activity on the floor of each exchange (for the exchanges that still have open outcry trading) and discusses potential issues of concern with compliance staff at the exchange. Where appropriate, Surveillance staff makes referrals to DOE.

In addition, DCR's risk surveillance staff regularly monitors the risk posed to and by DCOs, clearing members, and market participants, including market risk, liquidity risk, credit risk, and concentration risk. Traders and FCMs that have a higher risk profile are then reviewed during the Commission's on-site review of a clearing house's risk management procedures and discusses potential issues of concern with compliance staff at the clearing house.

2. Is there an automated system which identifies unusual transactions on authorized exchanges and regulated trading systems?

Yes. DCM Core Principle 2 requires a DCM to monitor and enforce compliance with rules of the contract market, including access requirements, the terms and conditions of any contracts to be traded on the contract market, and rules prohibiting abusive trading practices of the contract market. *See* CFTC Regulation 38.150. Commission Regulation 38.156 requires a DCM to maintain an automated trade surveillance system capable of detecting potential trade practice violations. The automated system must load and process daily orders and trades no later than 24 hours after the completion of the trading day. In addition, the automated trade surveillance system must have the capability to detect and flag specific trade execution patterns and trade anomalies; compute, retain, and compare trading statistics; compute trade gains, losses, and futures-equivalent positions; reconstruct the sequence of market activity; perform market analyses; and support system users to perform in-depth analyses and ad hoc queries of trade-related data. Additionally, Commission Regulation 38.158 requires a DCM to establish and maintain procedures that require its compliance staff to conduct investigations of possible rule violations.

DCM Core Principle 4 requires the DCM to monitor trading to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process. *See also* CFTC Regulation 38.250.

DCM Core Principle 5 requires the DCM to reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month. The board of trade must adopt position limitations or position accountability levels for speculators, where necessary and appropriate. For any contract that is subject to a position limitation established by the Commission, pursuant to section 4a(a), the board of trade shall set the position limitation of the board of trade at a level not higher than the position limitation established by the Commission. *See also* CFTC Regulation 38.300).

DCM Core Principle 12 requires a DCM to establish and enforce rules to protect market participants from abusive practices committed by any party acting as an agent for the participants. *See also* CFTC Regulation 38.650.

DCM Core Principle 13 requires a DCM to establish and enforce disciplinary procedures that authorize the DCM to discipline, suspend, or expel members or market participants that violate the rules of the DCM. *See also* CFTC Regulation 38.700.

Commission Regulation 38.251 requires a DCM to, among other things, collect and evaluate data on individual traders' market activity on an ongoing basis in order to detect and prevent manipulation, price distortions and, where possible, disruptions of the physical-delivery or cash settlement process. In addition, a DCM must monitor and evaluate general market data in order to detect and prevent manipulative activity that would result in the failure of the market price to reflect the normal forces of supply and demand. *See* CFTC Regulation 38.251.

Commission Regulation 38.254 requires a DCM to have rules that require traders in its

contracts to keep records of their trading, including records of their activity in the underlying commodity and related derivatives markets, and make such records available upon request. Additionally, a DCM with participants trading through intermediaries must either use a comprehensive large-trader reporting system or be able to demonstrate that it can obtain position data from other sources in order to conduct an effective surveillance program. See CFTC Regulation 38.254.

With respect to SEFs, SEF Core Principle 2 requires the SEF to establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to provide market participants with impartial access to the market. See also CFTC Regulation 37.200. Commission Regulation 37.203(d) requires a SEF to maintain an automated trade surveillance system capable of detecting potential trade practice violations. The automated trade surveillance system must load and process daily orders and trades no later than 24 hours after the completion of the trading day. The automated trade surveillance system shall have the capability to detect and flag specific trade execution patterns and trade anomalies; compute, retain, and compare trading statistics; compute trade gains, losses, and swap-equivalent positions; reconstruct the sequence of market activity; perform market analyses; and support system users to perform in-depth analyses and ad hoc queries of trade-related data. CFTC Regulation 37.203(d). Additionally, Commission Regulation 37.203(f) requires a SEF to establish and maintain procedures that require its compliance staff to conduct investigations of possible rule violations. CFTC Regulation 37.203(f). Commission Regulation 37.206 requires a SEF to establish trading, trade processing, and participation rules that will deter abuses and have the capacity to enforce such rules through prompt and effective disciplinary action, including suspension or expulsion of members or market participants that violate the rules of the swap execution facility. CFTC Regulation 37.206.

SEF Core Principle 4 requires the SEF to monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions. See also CFTC Regulation 37.400.

SEF Core Principle 6 requires the SEF to reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month. A SEF that is a trading facility must adopt for each of the contracts of the facility, as is necessary and appropriate, position limitations or position accountability for speculators. For any contract that is subject to a position limitation established by the Commission pursuant to Section 4a(a) of the CEA, the SEF is required to set its position limitation at a level no higher than the Commission limitation. The SEF is also required to monitor positions established on or through the SEF for compliance with the limit set by the Commission and the limit, if any, set by the SEF. See also CFTC Regulation 37.600.

Commission Regulation 37.205 requires the SEF to capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses, including the capability to safely store all audit such data.

Commission Regulation 37.401 requires the SEF to collect and evaluate data on its market participants' market activity on an ongoing basis in order to detect and prevent manipulation, price distortions, and, where possible, disruptions of the physical-delivery or cash-settlement process. The SEF must also monitor and evaluate general market data in order to detect and prevent manipulative activity that would result in the failure of the market price to reflect the normal forces of supply and demand.

Commission Regulation 37.404 requires the SEF to have rules that require its market participants to keep records of their trading, including records of their activity in the index or instrument used as a reference price, the underlying commodity, and related derivatives markets, and make such records available, upon request, to the swap execution facility or, if applicable, to its regulatory service provider, and the Commission.

3. Can the regulator demonstrate adequate mechanisms and procedures to detect and investigate:

(a) Market and/or price manipulation?

Yes. The exchanges are obliged to detect and deter unlawful conduct and use a combination of direct surveillance, inspection, reporting, product design requirements, position limits, settlement price rules or market halts complemented by vigorous enforcement of their rules. The CFTC conducts oversight of the exchanges' programs to ensure effectiveness. In addition to the exchange surveillance program, the CFTC independently conducts an extensive market surveillance program, utilizing large trader reports. DOE also aggressively pursues leads to detect and deter violations, including manipulation. See response to Principle 34, Question 2.

With respect to a specific inquiry, the CFTC has power to investigate possible violations of the CEA, as discussed in Response to Principle 11, Question 1. In particular, DOE employs its full panoply of investigative powers to examine conduct that affects the integrity of the commodity futures and swaps markets, including price manipulation, cornering, communication of false information that tend to affect commodity prices (Sections 6(c), 6(d) and 9(a)(2) of the CEA); position limit violations (Section 4a(e) of the CEA); enumerated trade practice violations, such as wash trades, accommodation trades and fictitious sales (Section 4c(a) of the CEA); and disruptive practices, such as violating bids or offers, spoofing disregard for the orderly execution of transactions during the closing period (Section 4c(a) of the CEA); and prohibits the use or attempted use of any manipulative device, scheme or artifice to defraud, untrue or misleading statement, false report or any act that operates or would operate as a fraud. See CFTC Regulation 180.1.

To the extent the investigation indicates a violation of the CEA or Commission regulations, the Commission takes appropriate enforcement action as described in response to Question



2 in Principle 11.

In addition, DOE is empowered to investigate violations of Core Principles relating to registered entities.

(b) Insider trading?

The CEA has not historically prohibited insider trading in the commodity futures and options markets. The premise has been that insider trading has limited applicability to futures trading because it would defeat the market's basic economic function of allowing traders to hedge the risks of their commercial enterprises.<sup>94</sup> The price discovery function of futures markets depends on traders bringing information to the market through their trading. From an economic perspective, regulation has not focused on the source or quality of the information; rather, rational traders have been presumed to trade in their best economic interests. However, the knowing communication of false or misleading information that tends to affect commodity prices is a violation of Section 9(a)(2) of the CEA. .

An exception to this general rule is for information obtained by employees of the CFTC and registered entities. Section 9(e) of the CEA provides an explicit prohibition against insider trading for certain persons, making it a felony:

(1) for any person who is an employee, member of the governing board, or member of any committee of a board of trade, registered entity, or registered futures association, in violation of a regulation issued by the Commission, wilfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon on the basis of, or wilfully and knowingly disclose for any purpose inconsistent with the performance of such person's official duties as an employee or member, any material non-public information obtained through special access related to the performance of such duties; and

(2) wilfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon on the basis of material, non-public information that such person knows was obtained in violation of paragraph (1) from an employee, member of the governing board, or member of any committee of a board of trade, registered entity, or registered futures association.

It should be noted that the CEA's prohibitions of insider trading in Sections 9(c) and (d) apply to Commission employees and employees of SROs, as well as the SRO's board and committee members. See CEA Section 9(e); CFTC Regulation 1.59.

Section 746 of the Dodd-Frank Act added an insider trading prohibition regarding information emanating from Federal government departments and agencies that may affect or tend to affect the price of any commodity in interstate commerce or swap and persons who receive and trade in this information. See CEA Section 4c(a)(4). This prohibition applies to employees or agents of a Federal government department or agency or any person who receives information imparted by such an employee or agent and who knowingly uses the

<sup>94</sup> Testimony of Commission Chairman Phillip McBride before the SEC/CFTC Jurisdictional Issues and Oversight: Hearings on H.R. 5447, H.R. 5515 and H.R. 6156 Before the Subcommittee on Telecommunications, Consumer Protection and Finance of the House Committee on Energy and Commerce, 97<sup>th</sup> Cong., 2<sup>nd</sup> Sess., Part 1 at 21 (1982); *A Study of the Nature, Extent and Effects of Futures Trading by Persons Possessing Material Non-Public Information* (Sept. 1986). See also, Markham, Jerry W., "Front-Running" – Insider Trading Under the CEA," 38 Cath. U. L. rev. 69 (Fall 1988).

information to trade.

There is no explicit insider trading prohibition that applies to others in the futures industry, though some situations might allow for charges under the CEA's general fraud authority (*e.g.*, a broker trading ahead of an executable customer order).

To the extent an investigation indicates a violation of the CEA, the Commission takes appropriate enforcement action as described in response to Principle 11, Question 2.

(c) Misrepresentations of material information or other fraudulent or manipulative practices relating to securities and derivatives?

One mainstay of the CFTC's enforcement program is the detection, investigation and prosecution of fraudulent and manipulative practices. To that end, the Commission has the power to investigate possible violations of the CEA and employ its full panoply of investigative powers to examine the conduct at issue. To the extent an investigation indicates a violation of the CEA, the Commission takes appropriate enforcement action as described in response to Principle 11, Question 2.

In general, CEA Section 4b(a) makes it unlawful for any person, in or in connection with any order, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery on or subject to the rules of a DCM, for or on behalf of any other person:

- To cheat or defraud or attempt to cheat or defraud another person;
- Willfully to make or cause to be made to another person any false report or statement or willfully to enter or cause to be entered for the other person any false record;
- Willfully to deceive or attempt to deceive another person;
- Bucket such order (if such order is represented as an order to be executed); or
- Fill such order by offset against the order of any other person, or willfully or knowingly and without prior consent of the other person to become the buyer in respect to any selling orders or become the seller in respect to any buying order of such person.

CEA Section 4c prohibits "enter[ing] into a swap knowing, or acting in reckless disregard of the fact, that [a] counterparty will use the swap as part of a device, scheme, or artifice to defraud any third party." Sections 6c of the CEA authorizes the Commission to bring legal action against "any registered entity or other person [that] has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of [the CEA or any regulation thereunder]," including manipulation.

CEA Section 4o unlawful for a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly (A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant. Section 4o further makes it unlawful for any commodity

trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator registered under this Act to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been passed upon, by the United States or any agency or officer thereof.

CFTC Regulation 33.10 (which applies to DCMs pursuant to CFTC Regulation 38.2) makes it unlawful for any person to cheat, defraud or attempt to cheat or defraud any other person; to make or cause to be made to any other person any false report or statement or record; or to deceive or attempt to deceive any other person by any means whatsoever in connection with commodity option transactions.

Section 753 of the Dodd-Frank Act significantly enhanced the Commission's enforcement anti-fraud and anti-manipulation authority. For example, Section 6(c)(1) prohibits the use of any "manipulative or deceptive device or contrivance" in connection with any swap or contract of sale of any commodity in interstate commerce of for future deliver on or subject to the rules of any registered entity and includes a special provision for manipulation by false or misleading or inaccurate reporting. See also Regulation 180.1(a). These provisions lessened the intent requirement to prohibit "the reckless use of fraud-based manipulative schemes."

The Dodd-Frank Act also expanded the CFTC's authority to bring new types of enforcement actions alleging false statements to the CFTC. Section 6(c)(2) makes it unlawful to make any false or misleading statement of a material fact to the Commission in any form relating to a future, swap or commodity in interstate commerce. Section 6(c)(3) prohibits any person from directly or indirectly manipulating or attempting to manipulate the price of any product regulated by the Commission.

In Section 747 of the Dodd-Frank Act, Congress amended the CEA to expressly prohibit certain trading practices that it determined were disruptive of fair and equitable trading. Dodd-Frank Section 747 amends Section 4c(a) of the CEA to make it unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that:

- violates bids or offers;
- demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or
- is of the character of, or is commonly known to the trade as, "spoofing" (bidding or offering with the intent to cancel the bid or offer before execution).

See Principle 11, Question 9 for a summary of the enforcement matters from FY 2013 which provides some measure of the effectiveness of the Commission's anti-fraud and anti-manipulation enforcement program.

(d) Failure of compliance with other regulatory requirements, for example: conduct of business, capital adequacy, disclosure or segregation of client assets?
<p>Yes. The CFTC has adequate mechanisms and procedures to detect and investigate a failure to comply with regulatory requirements. For example, FCMs must segregate customer funds and cannot commingle firm assets with customer funds. Clearing organizations and depositories also must treat such funds as customer assets (Section 4d of the CEA); DCM Core Principle 11 requires DCMs to have and enforce rules to provide for the financial integrity of contracts traded on the DCM (including clearing and settlement through a DCO); SEF Core Principle 7 requires SEFs to establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the SEF, including the clearance and settlement of the swaps pursuant to Section 2(h)(1) of the Act; and capital, accounting, internal controls, and segregation requirements for FCMs and IBs are enumerated in CFTC Regulations 1.16 - 1.34. Where Staff in an operational Division believes a potential violation has occurred, it can make referrals to DOE.</p> <p>Moreover, as noted above in response to Question 1, DCR's risk surveillance staff regularly monitors the risk posed to and by DCOs, clearing members, and market participants, including market risk, liquidity risk, credit risk, and concentration risk. Under the DCO Core Principles and CFTC regulations, DCOs are required to establish a risk management framework that clearly identifies and documents the range of risks to which the DCO is exposed, addresses the monitoring and management of the entirety of those risks, and provides a mechanism for internal audit.<sup>95</sup> As part of the risk management program, DCOs are required to review on a daily basis all Large Trader Reports that are filed with the Commission by, or on behalf of, clearing members, in order to ascertain the risk of the overall portfolio of each large trader.<sup>96</sup> DCOs are also required to (a) maintain adequate arrangements and resources for: (i) the effective monitoring and enforcement of compliance with the rules of the DCO; and (ii) the resolution of disputes; (b) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a violation by the member or participant of any rule of the DCO; and (c) report to the CFTC regarding rule enforcement activities and sanctions imposed against members and participants.<sup>97</sup> Further, DCOs are required to have adequate arrangements and resources for the effective monitoring and enforcement of compliance with the rules of the DCO and the resolution of disputes.<sup>98</sup> As noted in response to Principle 34, Question, 1(b), the CFTC examines and oversees a DCO's risk management program to ensure effectiveness. All of the investigative tools available to the DOE are employed in the investigation of these types of matters. These tools include:</p>

<sup>95</sup> See DCO Core Principle D and CFTC Regulations 39.13(a)-(b).

<sup>96</sup> CFTC Regulation 39.13(h)(2).

<sup>97</sup> See DCO Core Principle H, 7 USC § 7a-1(c)(2)(H), and 17 CFR § 39.17(a).

<sup>98</sup> 17 CFR § 39.17(b).

- Ability to obtain records and information via inspection powers and subpoena powers;
- Ability to obtain voluntary statements and sworn testimony;
- Trade analysis; and
- Financial analysis.

To the extent the investigation indicates a violation of the CEA, the Commission takes appropriate enforcement action as described in response to Question 2 in Principle 11.

4. Does the regulator have an adequate system to receive and respond to the intelligence that it receives?

Yes. The CFTC has authority to collect information and evidence pertinent to the effective enforcement of the CEA and Commission regulations. See CEA Sections 2, 5, 8a, 6c, and applicable CFTC regulations. The Commission may also collect information and evidence relating to futures, options on futures and swaps on behalf of foreign authorities pursuant to CEA Section 12(f)(1). This includes information provided by the public.

DOE investigates and prosecutes alleged violations of the CEA and Commission regulations, which often emanate from customer complaints. And, while the Commission does not represent any particular customer or claimant, the Commission relies on the public as an important source of information in carrying out its regulatory and enforcement responsibilities. The public may contact DOE to report suspicious activities or transactions which may involve the trading of commodity futures contracts or commodity options by calling the CFTC toll-free (866-366-2382), submitting a form on the CFTC's Web site (<http://www.cftc.gov/customerprotection/redressandrepairs/index.htm>) or e-mailing the Commission (Questions@cftc.gov).

Section 748 of the Dodd-Frank Act amended the CEA by adding a new Section 23, "Commodity Whistleblower Incentives and Protection." Pursuant to Section 23, the Commission established a whistleblower program under which the CFTC will pay awards, based on collected monetary sanctions and under regulations prescribed by the Commission to eligible whistleblowers who voluntarily provide the Commission with original information about violations of the CEA that lead either to a covered judicial or administrative action or a related action. In order to be eligible, the whistleblower must submit information on a Form TCR (<http://www.cftc.gov/ConsumerProtection/WhistleblowerProgram/index.htm>) and provide additional information and assistance as requested.

The information provided by the public is used in the routine operation of the Commission, which includes law enforcement, review of legislative and regulatory proposals, regulation of the commodity interest and swaps markets, and review of reports and documents filed with the Commission. Specifically, in connection with its law enforcement function, DOE will review the complaint and, if warranted, conduct an investigation into the activity. In the event the investigation results in an enforcement action alleging violations of the CEA, the Commission may use the information provided by the public in any administrative or civil proceeding in which it is a party, or in which any member of the Commission or its staff participates as a party. The CFTC may also provide the information to other state and Federal agencies, and foreign authorities.

As indicated in response to Principle 11, Question 4, the Commission may also direct customers to the Commission's reparations program as a mechanism for resolving appropriate complaints.

#### *Compliance System*

5. Does the regulator require regulated entities to have in place supervisory and compliance procedures reasonably designed to prevent securities laws violations?

Yes. As noted in the Rule Enforcement Review section of the response to Principle 9, Question 4(a), DMO staff conducts a review of DCMs for compliance with DCM Core Principle 2 to ensure that the Exchange is enforcing the rules of the contract market, including the terms and conditions of any contracts to be traded and any limitations on access to the contract market. *See also* CFTC Regulation 38.150.

DCM Core Principle 4 requires the DCM to monitor trading to prevent market manipulation, price distortion, and disruptions of the delivery or cash-settlement process. *See also* CFTC Regulation 38.250.

DCM Core Principle 5 requires the DCM to reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month. A DCM must adopt position limitations or position accountability for speculators, where necessary and appropriate. *See also* CFTC Regulation 38.300.

DCM Core Principle 9 requires the DCM to provide a competitive, open, and efficient market and mechanism for executing transactions. *See also* CFTC Regulation 38.500.

DCM Core Principle 10 requires the DCM to maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information for purposes of assisting in the prevention of customer and market abuses and providing evidence of any violations of the rules of the contract market. *See also* CFTC Regulation 38.550.

DCM Core Principle 11 requires the DCM to establish and enforce rules providing for the financial integrity of any contracts traded on the contract market (including the clearance and settlement of the transactions with a DCO), and rules to ensure the financial integrity of any FCMs and IBs and the protection of customer funds. *See also* CFTC Regulation 38.600.

DCM Core Principle 12 requires the DCM to establish and enforce rules to protect market participants from abusive practices committed by any party acting as an agent for the participants. *See also* CFTC Regulation 38.650.

With respect to SEFs, SEF Core Principle 2 requires the SEF to establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to provide market participants with impartial access to the market. *See also* CFTC Regulation 37.200.

SEF Core Principle 4 requires the SEF to monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions. *See also* CFTC Regulation 37.400.

SEF Core Principle 6 requires the SEF to reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month. A SEF that is a trading facility



	<p>shall adopt for each of the contracts of the facility, as is necessary and appropriate, position limitations or position accountability for speculators. <i>See also</i> CFTC Regulation 37.600.</p> <p>SEF Core Principle 7 requires the SEF to establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the SEF, including the clearance and settlement of the swaps pursuant to Section 2(h)(1) of the Act. <i>See also</i> CFTC Regulation 37.700.</p> <p>Commission Regulation 37.205 requires the SEF to capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses, including the capability to safely store all audit such data.</p> <p>For information on intermediaries, <i>see</i> response to Principle 12, Question 1(c).</p>
6.	<p>Does the regulator monitor how compliance procedures are executed and communicated to employees of such entities?</p> <p>Yes. During RERs conducted by DMO, Staff reviews the DCM's compliance program to ensure, among other things, that the exchange is adhering to the procedures prescribed in the exchange's Compliance Manual. DMO staff also conducts a review of the DCM to ensure that the exchange has adequate staff to fulfil its self-regulatory responsibilities. <i>See</i> CFTC Regulations 38.155 and 38.701. As noted above in response to Question 5, it is anticipated that DMO staff will conduct RERs for SEFs after a SEF obtains permanent registration and these reviews will also ensure that the SEF is adhering to the procedures prescribed in the SEF's Compliance Manual. Commission Regulation 37.203(c) requires the SEF to maintain sufficient compliance staff and resources to ensure that it can conduct effective audit trail reviews, trade practice surveillance, market surveillance, and real-time market monitoring. In addition, Commission Regulation 37.206(a) requires a SEF to establish and maintain sufficient enforcement staff and resources to effectively and promptly prosecute possible rule violations within the disciplinary jurisdiction of the SEF.</p> <p>To help ensure compliance by registrants with the operational conduct requirements, Commission Regulation 166.3 requires each registrant (except APs with no supervisory duties), to "diligently supervise" the handling by its partners, officers, employees and agents of all activities relating to its business as a CFTC registrant. Also, the review of FCM internal procedures falls within the scope of SRO audit and surveillance obligations under Regulation 1.52. SRO obligations under this regulation include monitoring and auditing compliance by FCMs with their minimum financial and related reporting requirements, and also receiving the financial reports that all FCMs are required to file.</p> <p>In the context of an enforcement investigation, DOE will review and investigate the supervisory and compliance procedures of Commission registrants. As set forth more fully in response to Principle 12, Question 9, below, failure to supervise is a separate violation of the Commission's regulations.</p>
7.	<p>Can the regulator take measures against or discipline or sanction regulated entities for failure to supervise reasonably subordinate personnel whose activities violate the securities</p>

	laws?
	<p>Yes. Commission Regulation 166.3 requires each Commission registrant to “diligently supervise the handling ... of all commodity interest accounts” by its partners, officers, employees and agents. Thus, any violation of the CEA by a supervised person creates a liability on the supervisor for failure to supervise. Independently, Section 2(a)(1)(B) of the CEA imposes <i>respondeat superior</i> liability on the principal for the acts of its agents. “The act, omission, or failure of any official, agent or other person acting for any individual, association, partnership, corporation or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent or other person.” The full panoply of remedies is available in an enforcement proceeding alleging these violations. See Response to Principle 12, Question 2.</p>
8.	<p>Does the regulator require market surveillance mechanisms that permit an audit of the execution and trading of all transactions on authorized exchanges and regulated trading systems?</p> <p>Yes. DCM Core Principle 10 requires the DCM to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information for purposes of assisting in the prevention of customer and market abuses and providing evidence of any violations of the rules of the contract market. See also CFTC Regulation 38.550.</p> <p>DCM Core Principle 18 requires the DCM to maintain records of all activities related to the business of the contract market in a form and manner acceptable to the Commission for a period of at least five years. See also CFTC Regulation 38.950.</p> <p>Pursuant to Commission Regulation 38.551, a DCM must capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses. Such data must be to reconstruct all transactions within a reasonable period of time. An acceptable audit trail also must permit the DCM to track a customer order from time of receipt through fill, allocation or other disposition, and must include both order and trade data. Further, the audit trail must include original source documents, a transaction history database, electronic analysis capability, and safe storage capability.</p> <p>Commission Regulation 38.552 requires original source documents to include unalterable, sequentially identified records on which trade execution information is originally recorded, whether manually or electronically. A transaction history database includes a history of all trades executed via open outcry or via entry into an electronic trading system, including all orders entered into an electronic system, including all order modifications and cancellations. A transaction history database also includes all data that are input into the trade entry or matching system for the transaction to match and clear the customer type indicator code, timing and sequencing data adequate to reconstruct trading, and identification of each account to which fills are allocated. An electronic analysis capability must include electronic analysis capability with respect to all audit trail data in the transaction history database. Such electronic analysis capability must ensure that the designated contract market has the ability to reconstruct trading and identify possible trading violations with respect to both</p>

customer and market abuse. The safe storage capability of the designated contract market must include the capability to safely store all audit trail data retained in its transaction history database. Such safe storage must include the capability to store all data in the database in a manner that protects it from unauthorized alternation, as well as from accidental erasure or other loss.

With respect to SEFs, SEF Core Principle 2 requires a SEF to establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to provide market participants with impartial access to the market and to capture information that may be used in establishing whether rule violations have occurred. *See also* Commission Regulation 37.200.

SEF Core Principle 10 requires the SEF to maintain records of all activities relating to the business of the facility in a form and manner acceptable to the Commission for a period of five years. *See also* CFTC Regulation 37.1000.

Commission Regulation 37.205 requires a SEF to capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses. Such data shall be sufficient to reconstruct all indications of interest, requests for quotes, orders, and trades within a reasonable period of time and to provide evidence of any violations of the rules of the SEF. An acceptable audit trail shall also permit the swap execution facility to track a customer order from the time of receipt through fill, allocation, or other disposition, and shall include both order and trade data. The audit trail must also include original source documents, a transaction history database, electronic analysis capability, and safe storage capability.

CFTC Regulation 1.31 governs the manner in which an exchange is required to maintain trade-related records. The Regulation mandates that all records required to be kept under the CEA or CFTC regulations be maintained for five years and be readily accessible during the first two years. However, trading cards, documents on which trade information is originally recorded in writing, and order tickets must be retained in hard copy for five years. *See also* response to Principle 10.

#### *Effectiveness*

9. Based on articulated criteria, does the regulator or other competent authority have an effective enforcement program in place in order to enforce securities laws?

Yes.

The CFTC has approximately 115 attorneys and 23 investigators and 3 economists in the Enforcement Division who are charged with investigating and prosecuting violations of the CEA.

When an investigation indicates that there is reason to believe that violative conduct has occurred, the CFTC files either an administrative or civil injunctive enforcement action against the alleged wrongdoers. In an administrative action, wrongdoers who are found to

have violated the CEA or CFTC regulations or orders can be prohibited from trading on U.S. futures markets and, if registered, have their registrations suspended or revoked. Violators also can be ordered to cease and desist from further violations, to pay civil monetary penalties of \$140,000<sup>99</sup> per violation (\$1 million for manipulation) or triple their monetary gain, and to pay restitution to those persons harmed by the misconduct. See CEA Sections 6(c), 6(d), and 8a. In civil injunctive actions, defendants can be enjoined from further violations, their assets can be frozen and their books and records impounded. Defendants also can be ordered to disgorge all illegally obtained funds, to make full restitution to customers, and to pay civil monetary penalties. See CEA Section 6(c).

Currently, DOE has approximately 99 litigation matters pending in United States District Courts throughout the U.S., approximately 433 pending investigations, and 77 preliminary inquiries. These matters target certain program areas, for example: 1) allegations of manipulation, attempted manipulation, and false reporting; 2) trade practice violations; 3) fraud and other misconduct by commodity pools, hedge funds, CPOs, and CTAs; and 4) financial, supervision, recordkeeping and other violations committed by registered entities. In addition, the Enforcement program continues to battle pervasive fraud involving retail forex futures, forex options, and/or off-exchange retail forex transactions.

By way of example, the following summary of enforcement matters from FY2013 provides some measure of the effectiveness of the Commission's enforcement program.<sup>100</sup>

#### ***LIBOR and other Interest Rate Benchmarks***

- The Commission simultaneously filed and settled charges against UBS, finding that it engaged in manipulation, attempted manipulation and false reporting of LIBOR and other benchmark interest rates for at least six years. The Commission found that UBS engaged in more than 2,000 instances of unlawful conduct involving dozens of employees on several continents, including colluding with other banks; inducing interdealer brokers to spread false information and influence other banks; and making false LIBOR submissions to protect UBS's reputation during the global financial crisis. The Commission ordered UBS to pay a \$700 million civil monetary penalty. In re UBS AG, et al., CFTC Docket No. 13-09 (CFTC filed Dec. 19, 2012), Press Release [6472-12](#).
- The Commission simultaneously filed and settled charges against The Royal Bank of Scotland plc and RBS Securities Japan Limited, finding that they engaged in manipulation,

<sup>99</sup> CFTC Regulation 143.8 provides an inflation adjustment for civil monetary penalties assessed under CEA Section 6(c) and 6b pursuant to the authority Debt Collection Improvement Act of 1996 at least once every four years. The inflation adjustment applies only to violations of the CEA, CFTC regulations or orders that occur after November 27, 1996 or the date when the inflation adjustment becomes effective.

<sup>100</sup> Additional non-public information showing the number of investigations and litigations opened and closed for the last three fiscal years, as well as those pending, will be made available to assessors on a confidential basis at a later date.

attempted manipulation, and false reporting relating to LIBOR for Yen and Swiss Franc for approximately four years, as recently as 2010 and dating back to at least mid-2006. The Commission ordered RBS to pay a \$325 million civil monetary penalty. In re The Royal Bank of Scotland plc, et al., CFTC Docket No. 13-14 (CFTC filed Feb. 6, 2013), Press Release [6510-13](#).

- The Commission simultaneously filed and settled charges against ICAP Europe Limited (ICAP), an interdealer broker, finding that for more than four years, from at least October 2006 through at least January 2011, ICAP engaged in manipulation, attempted manipulation, false reporting, and aiding and abetting derivatives traders' manipulation and attempted manipulation, relating to the LIBOR for Yen. The Commission ordered ICAP to pay a \$65 million civil monetary penalty. In re ICAP Europe Ltd., CFTC Docket NO. 13-38 (CFTC Filed Sept. 25, 2013), Press Release [6708-13](#).

- Taking these FY 13 actions together with the action against Barclays Bank in FY 12 (Press Release [6289-12](#)), the CFTC's benchmark-related cases have yielded total penalties of just under \$1.3 billion.

***Protection of Customer Funds (MF Global, Peregrine and Others)***

- The Commission filed charges in Federal court against MF Global Inc., MF Global Holdings Ltd., former Chief Executive Officer Jon S. Corzine, and former Assistant Treasurer of MF Global Edith O'Brien alleging, among other violations, MF Global's unlawful use of customer funds that harmed thousands of customers and violated fundamental customer protection laws on an unprecedented scale. On November 8, 2013, the court entered a consent order requiring MF Global requiring it to pay \$1.212 billion in restitution to customers, which represents 100% restitution funds lost by all commodity customers when the firm failed on October 31, 2011. CFTC v. MF Global Inc., et al., No. 13 CIV 4463 (S.D.N.Y. filed June 27, 2013), Press Releases [6626-13](#) (filing) and [6776-13](#) (settlement).

- The Commission obtained Federal court orders against Peregrine Financial Group, Inc. (PFG), and its owner, Russell Wasendorf, Sr., finding that they misappropriated in excess of \$200 million of customer funds, violated customer fund segregation requirements and made false statements to the CFTC. The Court enjoined further violations and ordered trading and registration bans, while reserving for future consideration the issues of a civil monetary penalty for both PFG and Wasendorf and restitution from Wasendorf. CFTC v. Peregrine Financial Group, Inc., et al., No. 1:12-cv-05383, Default Judgment (N.D. IL. entered Feb. 13, 2013), Press Release [6300-12](#) (regarding the Commission's filing of an enforcement action on July 10, 2012).

- The Commission simultaneously filed and settled charges against PFG's longtime auditor, Jeannie Veraja-Snelling, a sole practitioner certified public accountant, finding that her audits were not performed in accordance with GAAS and did not include appropriate review

and tests of internal accounting controls and procedures for safeguarding customer assets, as required by CFTC Regulations. The Commission permanently barred Veraja-Snelling from appearing or practicing as an accountant before the Commission. In re Veraja-Snelling, CFTC Docket No. 13-29 (CFTC filed Aug. 26, 2013), Press Release [6675-13](#).

- The Commission filed charges in Federal court against U.S. Bank National Association for unlawfully using and holding PFG customer segregated funds. According to the complaint, U.S. Bank, among other things, (i) unlawfully accepted Peregrine's customers' funds as security on loans it made to Wasendorf, his wife and his construction company; and (ii) knowingly facilitated Wasendorf's transfers of millions of dollars of customers' funds to pay for Wasendorf's private jet, his restaurant, and his divorce settlement. CFTC v. U.S. Bank, NA, No. 13-Civ-2041-EJM (N.D. Iowa filed June 5, 2013), Press Release [6601-13](#).

- The Commission filed charges in Federal court against the accounting firm Tunney & Associates, P.C. related to its audits for a registered FCM. According to the complaint, neither Tunney & Associates nor its owner certified public accountant, Michael Tunney, had experience auditing FCMs or any entity that holds customer segregated accounts, nor did they have an understanding of the applicable Commodity Exchange Act or CFTC regulatory provisions prior to accepting the audit engagements. On April 28, 2014, the court entered a consent order requiring defendants to pay, jointly and severally, a \$100,000 civil monetary penalty. CFTC v. Tunney & Associates, P.C., et al., No. 1:13-cv-02919 (N.D. Ill. filed Apr. 18, 2013), Press Releases [6571-13](#) (filing), and [6916-14](#) (settlement).

- The Commission simultaneously filed and settled 14 actions against FCMs alleging violations of customer segregation, secured, and net capital rules and/or related supervision failures, and obtained over \$5.5 million in civil monetary penalties, including: In re ABN AMRO Clearing Chicago LLC, CFTC Docket No. 13-25 (CFTC filed June 18, 2013) (Press Release [6614-13](#); ABN AMRO failed to segregate or secure sufficient customer funds, meet minimum net capital requirements, maintain accurate books and records, and supervise its employees; \$1 million civil monetary penalty); and In re Cantor Fitzgerald & Co, Inc., CFTC Docket No. 13-06 (CFTC filed Nov. 21, 2012) (Press Release [6419-12](#); Cantor failed to maintain sufficient funds in its customer segregation account for a period of three days and failed to provide the CFTC timely notice of its under-segregation, as required; \$700,000 civil monetary penalty).

- The Commission also settled Federal charges previously filed against MBF Clearing Corp. alleging that from September 2008 through March 2010, MBF routinely held between \$30 million and \$90 million of its customer funds in an account at another financial institution, but that account was not legally qualified to hold customer segregated funds. MBF paid a \$650,000 civil monetary penalty. CFTC v. MBF Clearing Corp., No. 1:12-cv-01830-SAS, Consent Order (S.D.N.Y. entered Nov. 28, 2012), Press Release [6437-12](#).

***Other Manipulation and Trading Violations; Pre- and Post-Dodd-Frank Authority***

- The Commission filed charges in Federal court against Eric Moncada, BES Capital LLC, and Serdika LLC alleging that they attempted to manipulate wheat futures prices, and engaged in fictitious sales and non-competitive transactions. According to the complaint, Moncada entered and immediately canceled numerous large-lot orders for wheat futures that he did not intend to fill, intending to create a misleading impression of increasing liquidity in the marketplace. Moncada allegedly would then seek to take advantage of any price movements that may have resulted from this manipulative scheme by placing smaller orders, which he hoped to fill at beneficial prices, on the opposite side of market from his large-lot cancelled orders. CFTC v. Moncada, et al., No. 12-cv-8791 (S.D.N.Y. filed Dec. 4, 2012), Press Release [6441-12](#).
- In the first case under Dodd-Frank Act's spoofing prohibition (bidding or offering with intent to cancel before execution), the Commission simultaneously filed and settled charges against Panther Energy Trading LLC and Michael J. Coscia. Per the Order, Defendants utilized a computer algorithm designed to illegally place and quickly cancel large bids and offers in futures contracts on CME Group's Globex trading platform. These orders gave the impression of significant trading interest, which Defendants exploited. The Commission ordered Panther and Coscia to pay a \$1.4 million civil monetary penalty, and disgorge \$1.4 million in trading profits. In re Panther Energy Trading LLC, et al., No. 13-26 (CFTC filed July 22, 2013), Press Release [6649-13](#).
- The Commission simultaneously filed and settled two related enforcement actions finding that: Gelber Group, LLC (Gelber), an FCM, reported orders during the pre-opening trading sessions it had no intention of executing; and Gelber and former Gelber trading manager, Martin A. Lorenzen, engaged in wash sales. In re Gelber Group, LLC, CFTC Docket No. 13-15 (CFTC filed Feb. 8, 2013) (ordering a \$750,000 civil monetary penalty); In re Lorenzen, CFTC Docket No. 13-16 (CFTC filed Feb. 8, 2013) (ordering a \$250,000 civil monetary penalty), Press Release [6512-13](#).

***Designated Contract Market Violations***

- The Commission filed charges in Federal court against the New York Mercantile Exchange, Inc. (CME NYMEX), which is owned and operated by the CME Group, and two former CME NYMEX employees, William Byrnes and Christopher Curtin, alleging that they unlawfully repeatedly disclosed material nonpublic customer information over two and a half years to an outside commodity broker who was not authorized to receive the information. CFTC v. Byrnes, et al., No. 13 CIV 1174 (S.D.N.Y. filed Feb. 21, 2013), Press Release [6519-13](#), and Press Release [6584-13](#) (regarding amended complaint to charge Ron Eibschutz, who received the confidential information, with aiding and abetting the violations).

***Futures Commission Merchant and Introducing Broker Supervision Violations***



- The Commission simultaneously filed and settled charges against FXDirectDealer, LLC (FXDD), a registered RFED and FCM, finding that from at least December 10, 2009, until June 2011, it violated its supervision obligations by employing a trading system that gave FXDD pricing advantages over and harmed thousands of its retail customers. The Commission ordered FXDD to make full restitution of \$1,828,261 to FXDD's current and former customers that were harmed by its violation and imposed a \$914,131 civil monetary penalty. In re FXDirectDealer, LLC, CFTC Docket No. 13-34 (CFTC filed Sept. 18, 2013), Press Release [6697-13](#).
- The Commission simultaneously filed and settled charges against FCStone LLC, an FCM, finding that it failed to implement adequate customer credit and concentration risk policies and controls in 2008 and part of 2009, allowing one account to acquire a massive options position that the account owners could not afford to maintain. FCStone, which was ultimately obligated to take over the account in question, lost approximately \$127 million. The Commission ordered FCStone to pay a civil monetary penalty of \$1.5 million. In re FCStone, LLC, CFTC Docket No. 13-24 (CFTC filed May 29, 2013), Press Release [6594-13](#).
- The Commission simultaneously filed and settled charges against Goldman, Sachs & Co. finding that it failed to supervise diligently its employees for several months in late 2007 when a then-Goldman trader was able to conceal an \$8.3 billion trading position from the firm. The Commission ordered Goldman to pay a \$1.5 million civil monetary penalty. In re Goldman Sachs & Co., CFTC Docket No. 13-08 (CFTC Dec. 7, 2012), Press Release [6450-12](#), and Press Release [6677-13](#) (regarding settlement by former Goldman employee Matthew Marshall Taylor for defrauding Goldman by intentionally concealing from Goldman the true position size, as well as the risk and potential profits or losses associated with a futures position in a firm account traded by him; CFTC v. Taylor, No. 1:12-cv-8170-RJS, Consent Order (S.D.N.Y. filed Aug. 29, 2013) (imposing \$500,000 civil monetary penalty)).
- The Commission simultaneously filed and settled charges against Foremost Trading LLC, an IB, finding that the firm failed to diligently supervise the handling of accounts held by clients that were referred to Foremost from three unregistered entities that sold futures trading systems (the Systems Providers). Foremost's officers, employees, and agents ignored warning signs that the Systems Providers were procuring their clients through fraudulent means and engaging in fraudulent business practices. The Commission ordered Foremost to pay a \$400,000 civil monetary penalty. In re Foremost Trading LLC, CFTC Docket No. 13-35 (CFTC filed Sep. 20, 2013), Press Release [6700-13](#).

#### ***False Statements under Dodd-Frank***

- The Commission used new Dodd-Frank authority prohibiting the making of false and misleading statements. The Commission filed and settled charges against a defendant who gave false testimony in a Division investigation, imposing a \$50,000 penalty on the defendant. In re Butterfield, CFTC Docket No. 13-33 (CFTC filed Sept. 16, 2013), Press Release



**6693-13.**

- The Commission filed charges in Federal court against Arista LLC and its principals, Abdul Sultan Walji (a/k/a Abdul Sultan Valji) and Reniero Francisco (who had previously been charged with fraud), alleging that the defendants misrepresented certain information in a letter sent to the CFTC's DOE during the course of an investigation. On December 3, 2013, the court entered a consent order that requires the defendants to pay more than \$8.25 million in restitution for the losses of defrauded investors. In addition, the order imposes civil monetary penalties of \$6.45 million on Walji, \$5.925 million on Francisco, and \$1.54 million on Arista. CFTC v. Arista LLC, et al., 12-CV-9043 (SDNY amended complaint filed May 28, 2013), Press Releases [6600-13](#) (filing) and [6786-13](#) (settlement).
- The Commission also used this new authority in its Peregrine enforcement action to charge the defendants for filing false statements on required forms with the Commission. See above, *Protection of Customer Funds (MF Global, Peregrine and Others)*.

***Precious Metals Fraud Charges under Dodd-Frank***

- Under the Dodd-Frank Act and implementing regulations, the Commission filed charges in Federal court against Hunter Wise Commodities, LLC, and related entities, charging them with fraudulently marketing illegal, off-exchange retail commodity contracts involving physical metals, including gold, silver, platinum, palladium, and copper since July 2011. The Division initially obtained summary judgment on the offering of the illegal contracts and, on May 16, 2014, Judge Middlebrooks issued an opinion and order following the trial of the fraud case against Hunter Wise and its control persons, Fred Jager and Harold Edward Martin, Jr. The court found that the defendants "repeated[ly], callous[ly], and blatant[ly]" defrauded approximately 3,200 retail customers who lost over \$52 million over an 18 month period and aided and abetted others in committing similar acts. As a result, the court permanently enjoined all defendants from future violations of the Commodity Exchange Act. The court ordered Hunter Wise Commodities, LLC, Hunter Wise Services, LLC, Hunter Wise Credit, LLC, and Hunter Wise Trading, LLC and the individuals running the companies, Fred Jager and Harold Edward Martin, Jr., to pay, jointly and severally, \$52.6 million in restitution to the defrauded customers, and to pay a civil monetary penalty, jointly and severally, of \$55.4 million, the maximum provided by law. CFTC v. Hunter Wise Commodities, LLC, et al., No. 12-cv-81311 (S.D. Fla. filed Dec. 5, 2012), Press Releases [6447-12](#) (filing) and [6935-14](#) (trial result).
- The Commission also filed and settled actions against 9 firms and 8 individuals who solicited retail customers to invest in financed precious metals transactions, which were executed through Hunter Wise, alleging that the firms were engaging in illegal, off-exchange precious metals transactions and requiring the firms and their principals to pay more than \$4.1 million in restitution. See *In re Secured Precious Metals Int'l, Inc., et al.*, CFTC Docket No. 13-12 (CFTC filed Jan. 28, 2013) (Press Release [6503-13](#); imposing a cease and desist order

and five-year trading ban); In re Barclay Metals, Inc., et al., CFTC Docket No. 13-13 (CFTC Jan. 28, 2013) (same); In re Joseph Glenn Commodities, LLC, et al., CFTC Docket No. 13-18 (CFTC filed Mar. 27, 2013) (Press Release [6542-13](#); ordering defendants to pay approximately \$635,000 in restitution and to return approximately \$330,000 remaining in customers' accounts, and requiring one of the principals to pay a civil monetary penalty of \$100,000); In re Pan American Metals of Miami, LLC, et al., CFTC Docket No. 13-27 (CFTC filed July 29, 2013) (Press Release [6653-13](#); ordering defendants to jointly pay restitution of approximately \$3.2 million and a \$1.5 million civil monetary penalty); In re London Metals Market, LLC, et al., CFTC Docket No. 13-32 (CFTC filed Sept. 4, 2013) (Press Release [6680-13](#); ordering defendants to pay \$121,665.75 in restitution); In re Hall, CFTC Docket No. 13-32 (CFTC filed Sept. 4, 2013) (Press Release [6681-13](#); ordering Hall to pay \$202,577 in restitution).

- The Commission also brought actions against other firms that purported to directly deal in precious metal. See CFTC v. Global Precious Metals, LLC, et al., No. 13-cv-21708, Default Judgment (S.D. Fla. entered Aug. 12, 2013) (Press Release [6670-13](#); defendants ordered to pay a \$1.26 million civil monetary penalty, \$736,979 in restitution, and to disgorge \$186,860 in ill-gotten gains); CFTC v. AmeriFirst Management LLC, et al., No. 13-cv-61637 (S.D. Fla. filed July 29, 2013) (Press Release [6655-13](#); Division charges defendants with operating a precious metals scheme marketing illegal, off-exchange financed commodity transactions, claiming that they operated through a network of more than 30 dealers, and fraudulently misrepresenting the nature of those transactions); and CFTC v. Worth Group, Inc., et al., No. 13-cv-80796 (S.D. Fla. filed Aug. 13, 2013) (Press Release [6666-13](#); Worth is alleged to have taken in over \$73 million from hundreds of retail customers located throughout the United States).

- The Commission settled previously filed charges against Ronnie Gene Wilson and his company, Atlantic Bullion & Coin, Inc. (Atlantic Bullion), alleging that they defrauded investors in connection with a multi-million dollar silver bullion Ponzi scheme. The June 6, 2012 complaint charged defendants under new Dodd-Frank Act anti-fraud prohibition in connection with a contract of sale of a commodity in interstate commerce. Wilson was ordered to pay a \$23 million civil monetary penalty and \$11,530,000 of restitution (and in a parallel criminal case, sentenced to 235 months' imprisonment). CFTC v. Atlantic Bullion & Coin, Inc., et al., No. 8:12-cv-01503-JMC, Consent Order (D.S.C. filed Feb. 27, 2013), Press Release [6524-13](#).

### ***Ponzi Fraud -- Trial Victory***

- On April 24, 2013, following a bench trial, the U.S. District Court for the Southern District of Florida ordered William Center to pay restitution of \$455,430 individually and \$8,652,140.41 jointly and severally with Trade, LLC, as well as a \$4 million civil monetary penalty; and Gregory Center to pay \$265,661 restitution and a \$2 million civil monetary penalty. The Commission filed charges against the defendants on June 22, 2010 (Press Release [5848-10](#))

alleging that they operated a Ponzi scheme. CFTC v. Milton, et al., No. 9:10-cv-80738-DTKH, Memorandum Opinion (S.D. Fla. May 17, 2013), Press Release [6593-13](#).

### ***“Prediction Market” Off-Exchange Options Trading***

- The Commission filed charges in Federal court against Intrade The Prediction Market Limited and Trade Exchange Network Limited (TEN), companies based in Dublin, Ireland, with offering prohibited off-exchange commodity option contracts to U.S. customers by operating an online “prediction market” trading website, through which customers buy or sell binary options that allow them to predict (“yes” or “no”) whether a specific future event will occur. The Commission also alleged that defendants made false statements to the Commission about their website and that TEN violated a 2005 CFTC cease and desist order (Press Release [5124-05](#)). CFTC v. Trade Exchange Network Limited, No. 1:12-cv-01902 (D.D.C. Nov. 26, 2012), Press Release [6423-12](#).
- The Commission filed charges in Federal court against Banc de Binary, Ltd., a foreign company, alleging that it operated an unregistered FCM and, from May 2011 through March 2013, operated an online trading website that allowed U.S. customers to trade options products prohibited by the CFTC’s ban on off-exchange options trading. On May 6, 2014, the Commission filed an amended complaint charging three corporate affiliates of Banc de Binary, Ltd. – E.T. Binary Options Ltd. (incorporated in Israel), BO Systems Ltd., and BDB Services Ltd. (both incorporated in the Republic of Seychelles) – also with violating the CFTC’s ban on off-exchange options trading. CFTC v. Banc De Binary LTD, No. 2:13-cv-00992 (D. Nev. filed June 5, 2013, amended May 6, 2014), Press Releases [6602-13](#) (original filing) and [6923-14](#) (amended filing).

### ***Cooperation with Domestic Law Enforcement Partners***

DOE works actively with Federal and state criminal and civil law enforcement authorities, including by sharing information in just under 300 investigations and prosecutions. These efforts reflect the high priority that the CFTC places on supporting criminal prosecution of willful violations of the commodities laws. Approximately 93 percent of the CFTC’s major fraud cases filed during FY 13 involved a parallel criminal proceeding, with violators sentenced up to 50 years’ imprisonment.

During the last three fiscal years, October 1, 2010 through September 30, 2013, the CFTC referred an average of approximately 50 matters to domestic criminal and civil authorities annually, of which an average of 40 matters were referred to criminal authorities. As a result of these criminal referrals, an average of 45 indictments were filed annually alleging a range of criminal misconduct arising out of activity in the futures and swaps markets – including mail fraud, wire fraud, conspiracy, securities fraud, commodities fraud, registration violations, market manipulation, tax violations, conversion, money laundering, theft, forgery, and threats to Federal officials. The principal criminal sanctions in those cases reaching

judgment included prison sentences, fines, and restitution. Defendants received prison sentences of up to 50 years, others received fines of over \$100 million, and still others were ordered to pay restitution of more than \$250 million.<sup>101</sup>

### ***Cooperation with International Regulators***

The Commission has entered into bilateral cooperative enforcement/information sharing arrangements with more than twenty-five foreign authorities. In 2002, the Commission entered into a multilateral information sharing arrangement established by IOSCO which has become the international benchmark for such international MOUs. In FY 2013, DOE made 300 requests for assistance to 60 foreign authorities and received 69 requests from 23 different foreign authorities to which it responded.

Please also refer to the CFTC's responses to Principles 13 – 15.

### ***Overall Monetary Relief Ordered***

The Commission has obtained the following monetary relief<sup>102</sup> in its civil and administrative enforcement actions over the last 3 fiscal years.

<b>Fiscal Year</b>	<b>Civil Monetary Penalties</b>	<b>Restitution and Disgorgement</b>
FY11	\$316,682,679	\$181,844,807
FY12	\$475,360,925	\$456,581,900
FY13	\$1,570,700,568	\$201,409,408
FY14 <sup>103</sup>	\$961,072,836	\$1,330,365,570
<b>Total</b>	<b>\$4,831,648,447</b>	<b>\$3,686,210,358</b>

<sup>101</sup> Additional non-public information listing criminal referrals and sanctions will be made available to Assessors on a confidential basis at a later date.

<sup>102</sup> As indicated in response to Principle 11, Question 2 above, the Commission may also obtain non-monetary sanctions in its enforcement cases.

<sup>103</sup> Amount as of April 30, 2014.

PRINCIPLES RELATING TO COOPERATION (13-15)	
<b>Principle 13</b>	<b>Regulator should have the authority to share both public and non-public information with domestic and foreign counterparts.</b>
<b>Key Questions</b>	
1.	For each of the regulators identified, does the regulator have authority to share with other <i>domestic</i> regulators and authorities information on:
(a)	Matters of investigation and enforcement?
(b)	Determinations in connection with authorization, licensing or approvals?
(c)	Surveillance?
(d)	Market conditions and events?
(e)	Client identification including persons who beneficially own or control non-natural persons organized in the regulator's jurisdiction?
(f)	Regulated entities?
(g)	Listed companies and companies that seek a listing of their securities?
<p>Yes.<sup>104</sup> The CFTC may share <i>public</i> information without restriction. Section 8(e) of the CEA governs the sharing of <i>non-public</i> information by the CFTC, including with any Federal department or agency or with any department or agency of any State or any political subdivision thereof ("Domestic Regulator or Authority") acting within the scope of its jurisdiction.</p> <p>The CFTC may share non-public information with Domestic Regulators and Authorities, provided that the requirements in Section 8(e) are satisfied. Information shared with a Domestic Regulator or Authority that is a Federal department or agency may not be disclosed except in any action or proceeding under the laws of the United States to which it, the CFTC, or the United States is a party. Information shared with a Domestic Regulator or Authority that is a department or agency of a State or a political subdivision thereof may not be disclosed except in connection with an adjudicatory action or proceeding brought under the CEA or the laws of such State or political subdivision to which the State or political subdivision or any department or agency thereof is a party.</p> <p>In order to obtain adequate assurances that the requirements in Section 8(e) will be satisfied, the CFTC shares non-public information pursuant to an MOU or less formal arrangement that includes undertakings related to, among other things, confidentiality and use of the information.</p> <p>In addition to the general information-sharing provisions in Section 8(e), the CFTC may share information pursuant to the following statutory provisions:</p>	

<sup>104</sup> Please note that subparagraph (g) falls within the regulatory purview of the SEC.

Section 8(g) of the CEA states that the CFTC shall share any registration information maintained by the Commission upon reasonable request by any department or agency of any State or any political subdivision thereof. Whenever the CFTC determines that the information is appropriate for use by such department or agency, the Commission shall provide it without request.

Section 12(a) of the CEA states that the CFTC may cooperate with any department or agency of the Federal government, any State, territory, district or possession, or any department, agency or political subdivision thereof.

Section 2(a)(9)(B)(i) of the CEA states that the CFTC shall maintain communications with the Treasury Department, Federal Reserve, and SEC for the purpose of keeping them informed of Commission activities that relate to their responsibilities.

Sections 112(d)(1)-(2) of the Dodd-Frank Act states that the FSOC may request and receive, and member agencies are authorized to provide, any data or information as necessary to monitor the financial services marketplace to identify potential risks to the financial stability of the United States or to otherwise carry out any of the provisions of Subchapter I of Chapter 53 of Title 12 of the Dodd-Frank Act.

Section 809(e)(1) of the Dodd-Frank Act states that the FSOC, Federal Reserve, appropriate financial regulators and supervisory agencies are authorized to provide notice of and share appropriate reports, information or data related to material concerns about a designated financial market utility ("DFMU") or financial institution engaged in designated activities ("DFMI"). In addition, Section 809(e)(2) of the Dodd-Frank Act permits them to provide, subject to appropriate terms, conditions and assurances of confidentiality, confidential supervisory and other information to each other and to, among others, the Secretary of the Treasury, Federal Reserve banks and State financial institution supervisory agencies.

With respect to matters of investigation and enforcement:

Section 8(a)(2) of the CEA states that the CFTC shall as necessary cooperate with appropriate Federal agencies in the conduct of investigations.<sup>105</sup>

---

<sup>105</sup> To the extent that non-public information sought by an authority includes bank records that are subject to the Right to Financial Privacy Act ("RFPA") or electronic communications subject to the Electronic Communications Privacy Act ("ECPA"), the CFTC must ascertain, before sharing the records, that the material is relevant to a legitimate law enforcement inquiry of the requesting authority and, for Domestic Regulators and Authorities, ensure that there is an approved access request that includes RFPA and/or ECPA materials. The RFPA provides a procedure for obtaining bank records that includes notice to the account holder and an opportunity to be heard but, in certain circumstances, such notice can be delayed.

	Section 8(a)(3) of the CEA states that the CFTC shall provide the SEC with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any FCM or IB registered pursuant to Section 4f(a)(2) of the CEA; any floor broker or floor trader exempt from registration pursuant to Section 4f(a)(3) of the CEA; any AP exempt from registration pursuant to Section 4k(6) of the CEA; or any board of trade that is a DCM pursuant to Section 5f of the CEA.
2.	Can the regulator share the information described in Key Question 1 for regulatory and enforcement purposes with other domestic authorities without the need for external approval such as from a relevant government minister or attorney?
	Yes. The CFTC has the authority to share such information with Domestic Regulators and Authorities, subject to the conditions set forth in Section 8(e) of the CEA and as discussed in response to Principle 13, Question 1, above, without the need for external approval.
3.	Does the regulator have the authority to share information with foreign counterparts with respect to each of the matters listed in Key Question 1, specifically?
	(a) Matters of investigation and enforcement?
	(b) Determinations in connection with authorization, licensing or approvals?
	(c) Surveillance?
	(d) Market conditions and events?
	(e) Client identification including persons who beneficially own or control non-natural persons organized in the regulator's jurisdiction?
	(f) Regulated entities?
	(g) Listed companies and companies that seek a listing of their securities?
	<p>Yes.<sup>106</sup> The CFTC may share <i>public</i> information without restriction. Section 8(e) of the CEA governs the sharing of <i>non-public</i> information by the CFTC, including with any foreign futures authority<sup>107</sup> or with any department, central bank, ministry or agency of any foreign government or any political subdivision thereof ("Foreign Regulator or Authority") acting within the scope of its jurisdiction. No secrecy or blocking laws in the United States restrict the CFTC's ability to share information with Foreign Regulators and Authorities.</p> <p>The CFTC may share non-public information with Foreign Regulators and Authorities, provided that the requirements in Section 8(e) are satisfied. Information shared with a Foreign Regulator or Authority may not be disclosed except in connection with an adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which the foreign government or political subdivision or any Foreign Regulator or Authority is a party.</p>

<sup>106</sup> Please note that subparagraph (g) falls within the regulatory purview of the SEC.

<sup>107</sup> The term "foreign futures authority" is defined in Section 1a(26) of the CEA as "any foreign government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or enforce a law, rule, or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule, or regulation as it relates to a futures or options matter." Section 723(a)(2) of the Dodd-Frank Act added Section 2(d) to the CEA to provide that several enumerated provisions, including Section 1a and Section 8, apply to swaps.



In order to obtain adequate assurances that the requirements in Section 8(e) will be satisfied, the CFTC shares non-public information pursuant to an MOU or less formal arrangement that includes undertakings related to, among other things, confidentiality and use of the information.

In addition to the general information-sharing provisions in Section 8(e), the CFTC may share information pursuant to the following statutory provision:

Section 809(e)(2) of the Dodd-Frank Act states that the FSOC, Federal Reserve, appropriate financial regulators and supervisory agencies may provide, subject to appropriate terms, conditions and assurances of confidentiality, confidential supervisory and other information to, among others, foreign financial supervisors, foreign central banks and foreign finance ministries.

With respect to matters of investigation and enforcement:

Section 12(f)(1) of the CEA states that, upon request from a foreign futures authority, the CFTC may, in its discretion, provide assistance in conducting an investigation that the foreign futures authority<sup>108</sup> “deems necessary to determine whether any person has violated, is violating, or is about to violate any laws, rules or regulations relating to futures or options matters that the requesting authority administers or enforces. The Commission may conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States.” Section 12(f)(2) of the CEA states that, in deciding whether to provide assistance, the CFTC shall consider whether “the requesting authority has agreed to provide reciprocal assistance to the Commission in futures and options matters” and whether compliance with the request would prejudice the U.S. public interest.

4.	Can the regulator share the information identified in Key Question 3 above, for enforcement and regulatory purposes with <i>foreign</i> counterparts without the need for external approval, such as from a relevant government minister or attorney?
	Yes. The CFTC has the authority to share such information with Foreign Regulators and Authorities, subject to the conditions set forth in Section 8(e) of the CEA and as discussed in response to Principle 13, Question 3, above, without the need for external approval.
5.	Can the regulator provide information to other <i>domestic</i> and <i>foreign</i> authorities on an unsolicited basis?
	Yes. The CFTC has the authority to share information, subject to the conditions set forth in Section 8(e) of the CEA and as discussed in response to Principle 13, Questions 1 and 3, above. Section 8(g) of the CEA provides that the CFTC may provide, on its own initiative,

<sup>108</sup> As explained above, Section 723(a)(2) of the Dodd-Frank Act added Section 2(d) to the CEA to provide that several enumerated provisions, including Section 1a (which includes the definition of “foreign futures authority”) and Section 12(f), apply to swaps.



	registration information to certain authorities.
6.	Can the regulator share information with <i>foreign</i> counterparts even if the alleged conduct would not constitute a breach of the laws of the regulator's jurisdiction if conducted within that jurisdiction?
	Yes. As discussed in response to Principle 13, Question 3, above, Section 12(f)(1) of the CEA expressly states that the CFTC may provide investigative assistance to a foreign futures authority, including collecting and sharing information, "without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States."
7.	Can the regulator share with <i>domestic</i> and <i>foreign</i> counterparts information and records identifying the person or persons beneficially owning or controlling bank accounts related to securities and derivatives transactions and brokerage accounts as well as the necessary information to reconstruct a transaction, including bank records?
	Yes. <sup>109</sup> As discussed in response to Principle 13, Questions 1 and 3, above, the CFTC can share such information.
8.	Does the regulatory system provide enough assurance that the confidential information gathered by the Regulator in the exercise of its functions or powers that is shared with another competent authority, either domestically or internationally, is subject to appropriate rules of confidentiality?
	Yes. As discussed in response to Principle 13, Questions 1 and 3, above, Section 8(e) of the CEA provides such assurances and the CFTC shares non-public information pursuant to an MOU or less formal arrangement that includes undertakings related to, among other things, confidentiality and use of the information.

<sup>109</sup> Please note that securities transactions fall within the regulatory purview of the SEC.

<b>Principle 14</b>	<b>Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts</b>
<b>Key Questions</b>	
1.	Does the regulator have the power, by legislation, rules or as a matter of administrative practice, to enter into information-sharing agreements (whether formal or informal) with other domestic authorities?
<p>Yes. The CFTC has the authority, and has entered into, information-sharing arrangements with Domestic Regulators and Authorities.</p> <p>As discussed in response to Principle 13, Question 1, above, the CFTC may share public information without restriction and may share non-public information provided that the requirements in Section 8(e) of the CEA are satisfied. The CFTC obtains assurances that Section 8(e) requirements will be satisfied by entering into an MOU or less formal arrangement ("Cooperative Arrangement") that includes undertakings related to, among other things, confidentiality and use of the information.</p> <p>Cooperative Arrangements facilitate cooperation and the exchange of information, public or non-public, with Domestic Regulators and Authorities. MOUs are approved by the Commission and signed by the Chairman or his/her designee, but the CFTC may use less formal arrangements, either on an ongoing or <i>ad hoc</i> basis, to exchange information. Cooperative Arrangements establish understandings on various issues related to cooperation and provide clear mechanisms for the exchange of information, including the terms and conditions for sharing information.</p>	
2.	Does the regulator have the power, by legislation, rules or as a matter of administrative practice, to enter into information-sharing agreements (whether formal or informal) with foreign counterparts?
<p>Yes. The CFTC has the authority, and has entered into, information-sharing arrangements with Foreign Regulators and Authorities.</p> <p>As discussed in response to Principle 13, Question 3, above, the CFTC may share public information without restriction and may share non-public information provided that the requirements in Section 8(e) of the CEA are satisfied. The CFTC obtains assurances that Section 8(e) requirements will be satisfied by entering into a Cooperative Arrangement that includes undertakings related to, among other things, confidentiality and use of the information.</p> <p>Cooperative Arrangements facilitate cooperation and the exchange of information, public or non-public, with Foreign Regulators and Authorities. As discussed in response to Principle 14, Question 1, above, Cooperative Arrangements may be formal or informal. They establish understandings on various issues related to cooperation and provide clear mechanisms for the exchange of information, including the terms and conditions for sharing information.</p> <p>In addition to the information-sharing authority discussed in response to Principle 13, Question 3, above, Section 8(a)(1)(B)(ii) of the CEA identifies MOUs as a means through which the CFTC may receive confidential information from foreign futures authorities. More</p>	

	recently, the Dodd-Frank Act included two provisions that explicitly relate to information-sharing arrangements: Section 752(a) of the Dodd-Frank Act states that, in order to promote effective and consistent global regulation of swaps and security-based swaps, the CFTC, SEC, and prudential regulators, as appropriate, “may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors, swap counterparties, and security-based swap counterparties.” Section 752(b) of the Dodd-Frank Act states that, in order to promote effective and consistent global regulation of futures contracts and options on futures contracts, the CFTC “may agree to such information-sharing arrangements as may be deemed necessary or appropriate in the public interest for the protection of users of contracts of sale of a commodity for future delivery.”
3.	Is the regulator a signatory to the IOSCO MMoU (in the affirmative, please skip Question 4(a))?
	Yes. The CFTC has been a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (revised May 2012) (“IOSCO MMOU”) since 2002.
4.	Has the relevant regulator developed information-sharing mechanisms to:
	(a) Facilitate the detection and deterrence of cross-border misconduct?
	(b) Assist in the discharge of licensing, surveillance and enforcement responsibilities?
	<p>Yes. The CFTC has developed information-sharing mechanisms to assist in the discharge of licensing, surveillance and enforcement responsibilities.</p> <p>The CFTC is a signatory to a wide range of Cooperative Arrangements, for both supervisory and enforcement purposes. Cooperation and information sharing among market authorities is beneficial in licensing and supervising registrants, plays an integral role in market surveillance and enhances enforcement capabilities.</p> <p>Cooperative Arrangements for <i>supervisory</i> purposes typically specify shared understandings with respect to consultation and cooperation, information sharing, event-triggered notification, on-site visits, permissible uses of non-public information, and confidentiality and onward-sharing requirements.</p> <p>The CFTC has entered into 14 Cooperative Arrangements for supervisory, prudential and risk assessment purposes; two for financial information sharing; and 29 for supervision of collective investment schemes (“CIS”) and the alternative investment fund industry. Copies of these arrangements are available at <a href="http://www.cftc.gov/International/MemorandaofUnderstanding/mouInfo_Sharing_for_Supervisor">http://www.cftc.gov/International/MemorandaofUnderstanding/mouInfo_Sharing_for_Supervisor</a>, <a href="http://www.cftc.gov/International/MemorandaofUnderstanding/mouFinancial_Information_Sharing">http://www.cftc.gov/International/MemorandaofUnderstanding/mouFinancial_Information_Sharing</a>, and <a href="http://www.cftc.gov/International/MemorandaofUnderstanding/mouSupervision_of_Alternative">http://www.cftc.gov/International/MemorandaofUnderstanding/mouSupervision_of_Alternative</a>. The Commission also is a signatory to the Boca Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations, which is available at <a href="http://www.cftc.gov/International/InternationalInitiatives/oia_bocadec0398">http://www.cftc.gov/International/InternationalInitiatives/oia_bocadec0398</a>. In addition, the CFTC has signed six Cooperative Arrangements related to technical assistance, which are available at</p>

[http://www.cftc.gov/International/MemorandaofUnderstanding/mouInformation\\_Sharing\\_Related](http://www.cftc.gov/International/MemorandaofUnderstanding/mouInformation_Sharing_Related).

Cooperative Arrangements for *enforcement* purposes typically provide for access to non-public documents and information in an authority's possession and often include undertakings to obtain documents and to take testimony of, or statements from, witnesses on behalf of a requesting authority. Such arrangements also identify the agreed upon handling and uses of the information provided.

The primary MOU used by the CFTC for enforcement purposes is the IOSCO MMOU, to which the CFTC, SEC, and more than 100 Foreign Regulators and Authorities are signatories. Where a Foreign Regulator or Authority is not a signatory to the IOSCO MMOU, the CFTC may use bilateral Cooperative Arrangements entered into primarily for enforcement purposes. In addition to numerous informal letter arrangements, copies of 26 formal bilateral arrangements are available at

<http://www.cftc.gov/International/MemorandaofUnderstanding/mouCooperativeEnforcement>.

5. Where warranted by the scope of cross-border activity and the ability to provide reciprocal assistance does the regulator actively try to establish information-sharing arrangements with *foreign* regulators?

Yes. As discussed in response to Principle 14, Question 4, above, the CFTC has a long-standing practice of entering into Cooperative Arrangements with Foreign Regulators and Authorities.

Most recently, the CFTC has entered into broad-scope supervisory arrangements for Singapore,<sup>110</sup> Japan,<sup>111</sup> and Canada<sup>112</sup> that include, among others, DCOs, SDRs, SEFs, SDs, and MSPs. In addition, the CFTC recently signed an MOU related to DCO supervision with authorities in Australia.<sup>113</sup>

<sup>110</sup> Memorandum of Understanding Concerning Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Covered Entities with the Monetary Authority of Singapore (December 27, 2013), which is available at <http://www.cftc.gov/ucm/groups/public/@internationalaffairs/documents/file/masmou2013.pdf>.

<sup>111</sup> Memorandum of Cooperation Related to the Supervision of Cross-Border Covered Entities with the Financial Services Agency of Japan (March 10, 2014), which is available at <http://www.cftc.gov/ucm/groups/public/@internationalaffairs/documents/file/cftc-jfsamoc031014.pdf>.

<sup>112</sup> Memorandum of Understanding Concerning Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Covered Entities with the Alberta Securities Commission, British Columbia Securities Commission, Ontario Securities Commission, and Québec Autorité des marchés financiers (March 25, 2014), which is available at <http://www.cftc.gov/ucm/groups/public/@internationalaffairs/documents/file/asc-bcsc-osc-amfmou032514.pdf>.

<sup>113</sup> Memorandum of Understanding Concerning Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Clearing Organizations with the Reserve Bank of Australia and Australian Securities and Investments Commission (June 5, 2014), which is available at <http://www.cftc.gov/ucm/groups/public/@internationalaffairs/documents/file/cftc-rba-asic-clearingmou06051.pdf>.

	CFTC Staff in the Office of International Affairs (OIA) currently is negotiating Cooperative Arrangements for supervisory purposes with approximately 20 Foreign Regulators and Authorities. OIA has drafted some of these arrangements to be broad in scope; others focus on, <i>e.g.</i> , SDs and MSPs.
6.	Are these arrangements documented in writing?
	Yes. As discussed in response to Principle 14, Questions 4 and 5, above, arrangements with Foreign Regulators and Authorities are documented in writing and generally are available on the CFTC's website.
7.	Does the regulator take steps to assure safeguards are in place to protect the confidentiality of information transmitted consistent with its uses?
	<p>Yes. As discussed in response to Principle 13, Question 3, and Principle 14, Question 2, above, the CFTC takes steps to assure that safeguards are in place to protect the confidentiality of non-public information transmitted to Foreign Regulators and Authorities consistent with its uses.</p> <p>The CFTC may share non-public information with Foreign Regulators and Authorities, provided that the requirements in Section 8(e) of the CEA are satisfied. The CFTC obtains assurances that these requirements will be satisfied by entering into Cooperative Arrangements that include undertakings related to, among other things, confidentiality and use of the information.</p>
8.	Can the regulator maintain the confidentiality of the request for information received from a foreign regulator consistent with Art. 11 of the IOSCO MMOU?
	<p>Yes. The CFTC can maintain the confidentiality of a request from a Foreign Regulator or Authority in a manner consistent with Article 11 of the IOSCO MMOU, which states:</p> <p>(a) Each Authority will keep confidential requests made under this Memorandum of Understanding, the contents of such requests, and any matters arising under this Memorandum of Understanding, including consultations between or among the Authorities, and unsolicited assistance. After consultation with the Requesting Authority, the Requested Authority may disclose the fact that the Requesting Authority has made the request if such disclosure is required to carry out the request.</p> <p>(b) The Requesting Authority will not disclose non-public documents and information received under this Memorandum of Understanding, except as contemplated by paragraph 10(a) or in response to a legally enforceable demand. In the event of a legally enforceable demand, the Requesting Authority will notify the Requested Authority prior to complying with the demand, and will assert such appropriate legal exemptions or privileges with respect to such information as may be available. The Requesting Authority will use its best efforts to protect the confidentiality of non-public documents and information received under this Memorandum of Understanding.</p> <p>(c) Prior to providing information to a self-regulatory organization in accordance with paragraph 10(a)(ii), the Requesting Authority will ensure that the self-regulatory organization is able and will comply on an ongoing basis with the confidentiality provisions set forth in paragraphs 11(a) and (b) of this Memorandum of Understanding, and that the information will be used only in accordance with paragraph 10(a) of this</p>

	<p>Memorandum of Understanding, and will not be used for competitive advantage.</p> <p>As discussed in response to Principle 14, Questions 3 and 4, above, the CFTC is a signatory to the IOSCO MMOU.</p> <p>All CFTC investigations are non-public. Specifically, Section 8(a)(1) of the CEA prohibits the CFTC from making public any data and information that would separately disclose the business transactions or market positions of any person or trade secrets and names of customers. Pursuant to CFTC Regulation 11.3, information and documents obtained by the CFTC in the course of any investigation (including investigations initiated to assist a foreign futures authority) are deemed non-public and confidential, unless made a matter of public record (<i>e.g.</i>, as part of a civil or administrative proceeding).</p> <p>The CFTC has additional authority to protect from disclosure information regarding requests made by foreign futures authorities as well as information received from foreign futures authorities. With the exception of legally enforceable demands, pursuant to Section 8(a)(1) of the CEA, the CFTC shall not be compelled to disclose any information obtained from a foreign futures authority if: (1) the foreign futures authority has stated that public disclosure of the information would violate its laws; and (2) the CFTC has obtained the information pursuant to an MOU with that authority (or other procedure authorized by the CFTC).</p> <p>In addition, CFTC Regulation 10.42(b)(2)(v) provides that the CFTC's DOE may withhold from production in an administrative enforcement proceeding information obtained from a foreign (or domestic) governmental entity or from a foreign futures authority that either is not relevant to the resolution of the proceeding or was provided on condition that the information not be disclosed or that it only be disclosed by the Commission as evidence in an enforcement or other proceeding. CFTC Regulations 145.5(g)(1) and (4) permit the CFTC to refuse to make public, under FOIA, documents where disclosure could reasonably be expected to interfere with enforcement activities undertaken or likely to be undertaken by the CFTC or any other authority, or where disclosure could reasonably be expected to disclose the identity of a confidential source including a foreign agency or authority. CFTC Regulation 140.735-5 prohibits CFTC officers and employees from divulging, or causing or allowing to be divulged, confidential or non-public commercial, economic, or official information to any unauthorized person, or to release such information in advance of authorization for its release by the Commission.</p>
9.	<p>Can the regulator demonstrate that it shares information, where appropriate safeguards are in place, when it is requested by another domestic authority or foreign counterpart?</p> <p>Yes. The CFTC can demonstrate that it shares information, where appropriate safeguards are in place, when it is requested to do so by a Domestic Regulator or Authority or a Foreign Regulator or Authority. CFTC Staff shares information and has informal discussions in both supervisory and enforcement contexts, but only maintains statistics with respect to enforcement.</p> <p>Domestic: The CFTC's DOE has a Cooperative Enforcement unit whose mission is to make referrals and provide assistance to criminal authorities, both Federal and State, so that they can prosecute violations of laws pertaining to derivatives, as well as general criminal anti-</p>

fraud statutes. DOE has a policy requiring staff to make a referral to a criminal authority in all appropriate matters, but each authority makes its own decision concerning which cases it will prosecute based upon its own criteria and staffing. During FY2013, cooperative efforts resulted in 35 cases being filed by domestic criminal law enforcement authorities and Domestic Regulators and Authorities that included cooperative assistance from the CFTC. See Principle 12, Question 9.

Foreign: The CFTC's DOE has an International unit whose mission is to seek the assistance of and provide assistance to Foreign Regulators and Authorities during the investigation and prosecution of laws pertaining to derivatives, including the CEA. DOE has a practice of making referrals to a Foreign Regulator or Authority that may have an interest in the matter, but each Foreign Regulator or Authority makes its own decision concerning which matters it will pursue. During FY2013, the CFTC made 300 requests for assistance to 60 Foreign Regulators and Authorities, and received and responded to 69 requests from 23 Foreign Regulators and Authorities.<sup>114</sup> Over the past three fiscal years, the CFTC responded to 173 requests, with an average response time of 39.6 days. (FY2011: 46 matters, average response 35.9 days; FY2012: 62 matters, average response 46.6 days; FY2013: 65 matters, 35.7 days.)<sup>115</sup>

---

<sup>114</sup> Included in the "incoming" numbers are requests for assistance as well as referrals to the CFTC. Included in the "outgoing" numbers are requests for assistance as well as referrals made by the CFTC. Please note that each request for new information in an investigation is considered a separate request.

<sup>115</sup> With respect to calculations of response time for requests made to the CFTC, the average response times indicated include only closed or withdrawn requests. Pending requests are not included in the calculation.



**Principle 15 The regulatory system should allow for assistance to be provided to foreign Regulators who need to make inquiries in the discharge of their functions and exercise of their powers.**

**Key Questions**

1.	Is the <i>domestic</i> regulator able to offer effective and timely assistance to <i>foreign</i> regulators in obtaining:
(a)	Contemporaneous records sufficient to reconstruct all securities and derivatives transactions, including records of all funds and assets transferred into and out of bank and brokerage accounts relating to those transactions?
(b)	records for securities and derivatives transactions that identify:
(i)	The client:
(1)	Name of the account holder?
(2)	Person authorized to transact business?
(ii)	The amount purchased or sold?
(iii)	The time of the transaction?
(iv)	The price of the transaction?
(v)	The individual and the bank or broker and brokerage house that handled the transaction?
(c)	Information located in its jurisdiction identifying persons who beneficially own or control non-natural persons organized in its jurisdiction?
<p>Yes.<sup>116</sup> The CFTC is able to offer effective and timely assistance to foreign futures authorities by obtaining the records and information set forth above. As discussed in response to Principle 13, Question 3, above, Section 12(f)(1) of the CEA permits the CFTC to assist a foreign futures authority<sup>117</sup> in conducting an investigation that the foreign futures authority “deems necessary to determine whether any person has violated, is violating, or is about to violate any laws, rules or regulations relating to futures or options matters that the requesting authority administers or enforces. The Commission may conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States.” Section 12(f)(2) of the CEA states that, in deciding whether to provide assistance, the CFTC shall consider whether “the requesting authority has agreed to provide reciprocal assistance to the Commission in futures and options matters” and whether compliance with the request would prejudice the U.S. public interest.</p> <p>The CFTC may compel, on behalf of a foreign futures authority: (1) the production of documents, including, but not limited to, bank records, trading records, and records identifying the beneficial owners that are critical to such investigations; and (2) the taking of</p>	

<sup>116</sup> Please note that securities transactions fall within the regulatory purview of the SEC.

<sup>117</sup> As explained above, Section 723(a)(2) of the Dodd-Frank Act added Section 2(d) to the CEA to provide that several enumerated provisions, including Section 1a (which includes the definition of “foreign futures authority”) and Section 12(f), apply to swaps.



	statements. As discussed in response to Principle 13, Question 1, above, to the extent that banking and other financial records are subject to the RFPA <sup>118</sup> or electronic communications are subject to the ECPA, the CFTC must ascertain, before sharing the records, that the material is relevant to a legitimate law enforcement inquiry of the requesting authority and, for Domestic Regulators and Authorities, ensure that there is an approved access request that includes RFPA and/or ECPA materials.
2.	Is the <i>domestic</i> regulator able to offer effective and timely assistance to <i>foreign</i> regulators in securing compliance with laws and regulations related to:
(a)	Insider dealing, market manipulation, misrepresentation of material information and other fraudulent or manipulative practices relating to securities and derivatives, including solicitation practices, handling of investor funds and customer orders?
(b)	The registration, issuance, offer, or sale of securities and derivatives, and reporting requirements related thereto?
(c)	Market intermediaries, including investment and trading advisers who are required to be licensed or registered, collective investment schemes, brokers, dealers and transfer agents?
(d)	Markets, exchanges and clearing and settlement entities?
	Yes. <sup>119</sup> The CFTC is able to offer effective and timely assistance to foreign futures authorities in securing compliance with their laws and regulations. As discussed in response to Principle 13, Question 3, and Principle 15, Question 1, above, the CFTC is authorized to conduct an investigation, including the use of compulsory process, in response to a request from a foreign regulatory authority. As discussed in response to Principle 13, Question 6, above, the CFTC may render assistance to a foreign futures authority even if the matter would not constitute a violation of the laws of the United States.
3.	Is the <i>domestic</i> regulator able, according to its domestic laws and regulations, to provide effective and timely assistance to <i>foreign</i> regulators regardless of whether the <i>domestic</i> regulator has an independent interest in the matter?
	Yes. The CFTC is able to provide effective and timely assistance to foreign futures authorities, even without an independent interest in the matter. As discussed in response to Principle 13, Question 6, above, the CFTC may render assistance to a foreign futures authority even if the matter would not constitute a violation of the laws of the United States.
4.	Is the <i>domestic</i> regulator able to offer effective and timely assistance to <i>foreign</i> regulators in obtaining information on the regulatory processes in its jurisdiction?
	Yes. The CFTC is able to offer effective and timely assistance to foreign futures authorities in obtaining information on the regulatory processes in the United States. The CFTC has the authority to share such information with Foreign Regulators and Authorities, subject to the conditions set forth in Section 8(e) of the CEA and as discussed in response to Principle 13, Question 3, above.

<sup>118</sup> The RFPA provides a procedure for obtaining bank records that includes notice to the account holder and an opportunity to be heard but, in certain circumstances, such notice can be delayed.

<sup>119</sup> Please note that securities fall within the regulatory purview of the SEC.

5.	Is the <i>domestic</i> regulator able to offer effective and timely assistance to <i>foreign</i> regulators in requiring or requesting:
(a)	The production of documents?
(b)	Taking a person's statement or, where permissible, testimony under oath?
	Yes. As discussed in response to Principle 15, Question 1, above, the CFTC is able to offer effective and timely assistance to foreign futures authorities in requiring or requesting documents, statements, or testimony under oath.
6.	Is the <i>domestic</i> regulator able to offer effective and timely assistance to <i>foreign</i> regulators in obtaining court orders, if permitted, for example, urgent injunctions?
	Yes. The CFTC is able to offer effective and timely assistance to a foreign futures authority in obtaining court orders, including, <i>e.g.</i> , injunctions in urgent circumstances. Using its full investigatory powers pursuant to Section 12(f)(1) of the CEA, the CFTC may obtain information for a foreign futures authority that can be used in proceedings to obtain a court order.
7.	Is the <i>domestic</i> regulator able to provide effective and timely assistance to <i>foreign</i> regulators regarding information about financial conglomerates subject to its supervision and more precisely assistance in relation, for example, to:
(a)	The structure of financial conglomerates?
(b)	The capital requirements in conglomerate groups?
(c)	Investments in companies within the same group?
(d)	Intra-group exposures and group-wide exposures?
(e)	Relationships with shareholders?
(f)	Management responsibility and the control of regulated entities?
	<p>Yes. The CFTC is able to provide effective and timely assistance with respect to information on its registrants. As discussed in response to Principle 13, Question 3, above, the CFTC may share information in its files with Foreign Regulators and Authorities so long as, for non-public information, the requirements of Section 8(e) of the CEA are satisfied. In addition, as discussed in response to Principle 13, Question 3, and Principle 15, Question 1, above, the CFTC also may, pursuant to Section 12(f)(1) of the CEA, obtain information for a foreign futures authority.</p> <p>For FCMs, the CFTC could provide information such as:</p> <ul style="list-style-type: none"> <li>• an organizational chart depicting the various entities with which the FCM is affiliated (including subsidiaries) and specifically identifying the FCM's material affiliates, as determined by the criteria identified in CFTC Regulation 1.14(a);<sup>120</sup></li> <li>• capital requirements of an FCM or its affiliate(s) required by the CFTC;</li> <li>• financing and capital adequacy, including sources of funding, management of liquidity of material assets of the FCM, the structure of debt capital and sources of alternative</li> </ul>

<sup>120</sup> Please note that all non-material entities or affiliates in large organizational groups may not necessarily be included. Information relating to other related entities only is reported if it impacts whether an affiliate is deemed to be material.

	<p>funding;</p> <ul style="list-style-type: none"> <li>• direct ownership of 10 percent or more of the FCM (available through the registration database maintained by the NFA; and</li> <li>• risk management policies and procedures that describe the methods followed to mitigate exposures resulting from related party transactions.</li> </ul> <p><i>See generally</i> CFTC Regulations 1.12 (maintenance of minimum financial requirements), 1.14 (risk assessment recordkeeping), 1.15 (risk assessment reporting) and 1.17 (minimum financial requirements). In addition, to the extent the CFTC becomes concerned about the financial condition of an FCM, Section 4f(c)(3)(A) of the CEA empowers the Commission to require an FCM to make reports concerning the financial activities of affiliated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of the FCM.</p> <p>For SDs and MSPs, the CFTC could provide similar information for the business activities of such entities. As discussed in response to Principle 14, Question 5, above, the CFTC has signed, and CFTC staff also currently is negotiating, supervisory arrangements with foreign regulators and authorities, which would facilitate such information sharing.</p> <p>For DCOs, the CFTC could provide information related to their ability to comply with the Core Principles in Section 5b(c)(2) of the CEA or other relevant CEA requirements. For example, each DCO, on an ongoing basis, must demonstrate to the CFTC that it has adequate financial, operational and managerial resources to discharge the responsibilities of a DCO. <i>See</i> Core Principle B – Financial Resources. Moreover, a SIDCO is required to comply with additional risk management standards, which are promulgated, in part, pursuant to Section 805(a) of the Dodd-Frank Act and are set forth in Subchapter C of Part 39 of the CFTC’s regulations.<sup>121</sup> In addition, each DCO must provide to the CFTC all information that the Commission determines to be necessary to conduct oversight of the DCO. <i>See</i> Core Principle J – Reporting. Thus, to the extent information regarding financial conglomerates is related to a DCO’s ability to comply with CEA requirements and/or a SIDCO’s or Subpart C DCO’s ability to comply with Subchapter C of Part 39 of the CFTC’s regulations, the CFTC could provide such information.</p>
8.	<p>If the regulator cannot directly obtain the information set out in Key Question 1, can the regulator obtain that information from another domestic authority and share that information with the requesting regulator?</p>
	<p>Yes. The CFTC could obtain such non-public information from a Domestic Regulator or Authority and share it with the requesting regulator, provided that the requirements of Section 8(e) of the CEA are satisfied.</p>
9.	<p>May the requesting authority use the information furnished by the domestic authority for the purposes set forth under Art. 10(a) of the IOSCO MMoU?</p>
	<p>Yes. The requesting authority may use information from a Domestic Regulator or Authority</p>

<sup>121</sup> These requirements also apply to DCOs that have elected to opt in to the additional risk management standards set forth in Subchapter C of Part 39 of the CFTC’s regulations (each, a “Subpart C DCO”).

furnished by the CFTC for the purposes set forth in Article 10(a) of the IOSCO MMOU, which states:

(a) The Requesting Authority may use non-public information and non-public documents furnished in response to a request for assistance under this Memorandum of Understanding solely for:

(i) the purposes set forth in the request for assistance, including ensuring compliance with the Laws and Regulations related to the request; and

(ii) a purpose within the general framework of the use stated in the request for assistance, including conducting a civil or administrative enforcement proceeding, assisting in a self-regulatory organization's surveillance or enforcement activities (insofar as it is involved in the supervision of trading or conduct that is the subject of the request), assisting in a criminal prosecution, or conducting any investigation for any general charge applicable to the violation of the provision specified in the request where such general charge pertains to a violation of the Laws and Regulations administered by the Requesting Authority. This use may include enforcement proceedings which are public.

As discussed in response to Principle 14, Questions 3 and 4, above, the CFTC is a signatory to the IOSCO MMOU.

<b>PRINCIPLES RELATING TO ISSUERS (16-18) – <i>Not applicable to the CFTC</i></b>	
<b>Principle 16</b>	<b>There should be full, accurate and timely disclosure of financial results, risk and other information which is material to investors' decisions.</b>
<b>Key Questions</b>	
<i>Full Disclosure</i>	
1.	Does the regulatory framework have clear, comprehensive and reasonably specific disclosure requirements that apply to:
(a)	Public offerings, including the conditions applicable to an offering of securities for public sale, the content and distribution of prospectuses and other offering documents (and, where relevant, short form profile or introductory documents) and supplementary documents prepared in the offering?
(b)	Annual reports?
(c)	Other periodic reports?
(d)	Shareholder voting decisions?
(e)	Advertising of public offerings outside of the prospectus?
2.	Does the regulatory framework require accurate, sufficiently clear and comprehensive, and reasonably specific and timely disclosure of:
(a)	events that are material to the price or value of securities;
(b)	the most significant risks of investing in the security; and
(c)	important relevant information about the issuer and its activities?
3.	Does the regulatory framework require:
(a)	Financial information and other required disclosure in prospectuses, listing documents, annual and other periodic reports, and, where applicable, in connection with shareholder voting decisions, to be of sufficient timeliness to be useful to investors?
(b)	Periodic information about financial position and results of operations (which may be in summary form) to be made publicly available to investors?
(c)	Appropriate measures to be taken (for example, provision of more recent unaudited financial information) when the audited financial statements included in a prospectus for public offerings are not current?
<i>General Disclosure</i>	
4.	In addition to specific disclosure requirements, is there a general requirement to disclose either all material information or all information necessary to keep the disclosures made from being misleading?

<i>Sufficiency, Accuracy, Timeliness and Accountability for Disclosure</i>	
5.	Are there measures available to the regulator (e.g., review, certification, supporting documentation, sanctions) to address concerns with the sufficiency, accuracy and timeliness of the required disclosures?
6.	Does regulation ensure that issuers and others involved in the issuing process, which may include underwriters, directors, authorizing officers, promoters, experts and advisers, are liable for the content of disclosures they make?
<i>Derogations</i>	
7.	Are the circumstances where disclosures may be omitted or delayed limited to trade secrets, similar proprietary information or other valid business purposes, such as incomplete negotiations?
8.	Where there are derogations from disclosure, is regulation sufficient to provide for fulfilment of the objective of full and timely disclosure by allowing for:
(a)	Temporary suspensions of trading?
(b)	Restrictions on, or sanctions regarding, the trading activities of persons with superior information?
<i>Cross-Border Matters</i>	
9.	If public offerings or listings by foreign issuers are significant within the jurisdiction, are the jurisdiction's disclosure requirements for such offerings or listings of equity and debt securities by foreign issuers consistent with IOSCO's International Disclosure Standards for (i) Cross-Border Offerings and Initial Listings by Foreign Issuers and (ii) Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers?

***This principle is not applicable to the CFTC.***

**Principle 17      Holders of securities in a company should be treated in a fair and equitable manner.**

**Key Questions**

*Rights of Shareholders*

1. Does the regulatory and legal frameworks address the rights and equitable treatment of shareholders in connection with the following:

(a) Voting:

(i) For election of directors?

(ii) On corporate changes affecting the terms and conditions of their securities?

(iii) On other fundamental corporate changes?

(b) Timely notice of shareholder meetings and voting decisions?

(c) Procedures that enable beneficial owners to give proxies or voting instructions efficiently?

(d) Ownership registration (in the case of registered shares) and transfer of their shares?

(e) Receipt of dividends and other distributions, when, as, and if declared?

(f) Transactions involving:

(i) A takeover bid?

(ii) Other change of control transactions?

(g) Holding the company, its directors and senior management accountable for their involvement or oversight resulting in violations of law?

(h) Bankruptcy or insolvency of the company?

2. Is full disclosure of all information material to an investment or voting decision required in connection with shareholder voting decisions generally and the transactions referred to in Questions 1(a)(iii), 1(f)(i) and 1(f)(ii) specifically?

*Control*

3. With respect to transactions referred to in Question 1(f)(i) and 1(f)(ii), are shareholders of the class or classes of securities affected by the proposal:

(a) Given a reasonable time in which to consider the proposal?

(b) Supplied with adequate information to enable them to assess the merits of the proposal?

(c)	As far as practicable, given reasonable and equitable opportunities to participate in any benefits accruing to the shareholders under the proposal?
(d)	Given fair and equitable treatment (in particular, minority security holders) in relation to the proposal?
(e)	Not unfairly disadvantaged by the treatment and conduct of directors of any party to the transaction or by the failure of the directors to act in good faith in responding to or making recommendations with respect to the proposal?
4.	With respect to substantial holdings of voting securities:
(a)	Is information about the identity and holdings of persons who hold a substantial (well below controlling) beneficial ownership interest in a company required to be timely disclosed:
(i)	In public offering and listing particulars documents?
(ii)	Once the ownership threshold requiring disclosure has been reached?
(iii)	At least annually (e.g., in the issuer's annual report)?
(b)	Is it mandatory for material changes in such ownership and other required information to be disclosed in a timely manner?
(c)	Are these disclosure requirements applicable to two or more persons acting in concert even though their individual beneficial ownership might not have to be disclosed?
5.	With respect to holdings of voting securities by directors and senior management:
(a)	Is information about the beneficial ownership interest and material changes in beneficial ownership in a company required to be timely disclosed?
(b)	Is such information available:
(i)	In public offering and listing particulars documents?
(ii)	At least annually (e.g., in the issuer's annual report)?
(c)	Is the legal infrastructure sufficient to ensure enforcement of and compliance with these requirements?
<i>Cross-Border</i>	
6.	If public offerings or listings by foreign issuers are significant within the jurisdiction, does the jurisdiction require disclosure in foreign issuers' offering and listing particulars documents of any governance provisions or information relating to the foreign issuer's jurisdiction that may materially affect the fair and equitable treatment of shareholders?



***This principle is not applicable to the CFTC.***

**Principle 18      Accounting standards used by issuers to prepare financial statements should be of a high and internationally acceptable quality.**

**Key Questions**

1. Are issuers required to include audited financial statements in:
  - (a) Public offering and listing documents?
  - (b) Publicly available annual reports?
2. Do the required audited financial statements include:
  - (a) A balance sheet or statement of financial position?
  - (b) A statement of the results of operations?
  - (c) A statement of cash flow?
  - (d) A statement of changes in ownership equity or comparable information included elsewhere in the audited financial statements or footnotes?
3. With respect to the financial statements required in public offering and listing documents and publicly available annual reports:
  - (a) Are these required to be prepared and presented in accordance with a comprehensive body of accounting standards?
  - (b) Do these accounting standards require financial statements to
    - (i) Be comprehensive?
    - (ii) Be designed to serve the needs of investors?
    - (iii) Reflect consistent application of accounting standards?
    - (iv) Be comparable if more than one accounting period is presented?
  - (c) Are the prevailing accounting standards of an internationally acceptable quality?
4. Where unaudited financial statements are used, for example, in interim reports, and interim period financial statements in public offering and listing documents, in full or summary format, are the financial statements presented in accordance with accounting standards that are of a high and internationally acceptable quality?
5. In regard to oversight, interpretation and independence with respect to accounting standards:
  - (a) Does the regulatory framework provide for an organization responsible for the establishment and timely interpretation of accounting standards?

(b)	If yes, are the organization's processes open and transparent, and, if the organization is independent, is the standard setting or interpretation process undertaken in cooperation with, or subject to oversight by, the regulator or another body that acts in the public interest?
6.	Is there a system for enforcing compliance with accounting standards?
7.	If public offerings or listings by foreign issuers are significant within the jurisdiction, does the regulator permit the use of high quality, internationally acceptable accounting standards by foreign companies that wish to list or offer securities in the country?

**PRINCIPLES FOR AUDITORS, CREDIT RATING AGENICES, AND OTHER INFORMATION SERVICE PROVIDERS (19-23)**

**Principle 19 Auditors should be subject to adequate levels of oversight.**

**Key Questions**

1. Does the regulatory system provide a framework for overseeing the quality and implementation of auditing, independence, and ethical standards, including the quality control environments in which auditors operate?

Yes. The Commission's framework for overseeing auditors is three-pronged with respect to the financial and operational compliance of registered intermediaries. First, the Commission requires that all financial statements and schedules of its registrants be at least annually certified (opinion expressed) by a qualified outside accountant/auditor in accordance with requirements of Commission Regulation 1.16. Among other things, these qualified outside accountants must at a minimum be duly registered, in good standing and be independent. Second, the Commission oversees a self-regulatory examination regime, wherein SROs/DSROs are responsible for conducting financial and operational examinations over their respective members. Commission Regulation 1.52 outlines this SRO examination framework, describing the function, quality, and competency of examiners and evaluation of these examinations. Finally, Commission Staff conducts reviews of SROs' examination programs whereby Commission Staff selects a sample of an SRO's work papers to review. In addition, the Commission conducts limited-scope reviews of registrants in "for cause" situations.

2. Are auditors required to be qualified and competent pursuant to minimum requirements before being licensed to perform audits, and to maintain professional competency?

Yes. Commission Regulation 1.16 requires that the accountant's report state whether the audit was made in accordance with the auditing standards adopted by the PCAOB, and must designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which have been omitted and the reasons for their omission. Commission Regulation 1.16 also addresses the minimum requirements a public accountant must meet in order to be recognized by the Commission as qualified to conduct an examination for the purpose of expressing an opinion on the financial statements of an FCM. Commission regulation 1.16(b)(1) requires a public accountant to be registered and in good standing under the laws of the place of the accountant's principal officer or principal residence in order to be qualified to conduct examinations of FCMs. Additionally, all public accountants must be registered with the PCAOB.

CFTC Regulation 1.16 also requires the governing body of each FCM to ensure that the certified public accountant engaged is duly qualified to perform an audit of the FCM. Such an evaluation of the qualifications of the certified public accountant should include, among other issues, the certified public accountant's experience in auditing FCMs, the depth of the certified public accountant's staff, the certified public accountant's knowledge of the CEA and Commission regulations, the size and geographic location of the FCM, and the independence of the certified public accountant. The governing body should also review and consider the inspection reports issued by the PCAOB as part of the assessment of the qualifications of the public accountant to perform an audit of the FCM.

Under Commission Regulation 1.52, an SRO must cause an examinations expert to evaluate

	<p>the supervisory program and such SRO's application of the supervisory program at least once every three years. Regulation 1.52 defines an "examinations expert" as a nationally recognized accounting and auditing firm with substantial expertise in audits of FCMs, risk assessment and internal control reviews, and which is an accounting and auditing firm that is acceptable to the Commission. It is important to note, that this "examinations expert" is engaged to provide an assessment of only the SROs examination program, that is, an examination program that is separate and in addition to that which is normally undertaken by the PCAOB over registered outside auditors generally.</p>
3.	<p>Is there an oversight body that operates in the public interest, has an appropriate membership, an adequate charter of responsibilities and powers, and adequate funding, such that the oversight responsibilities are carried out in a manner independent of the auditing profession?</p>
	<p>Yes. Commission Regulation 1.16 requires that all certified public accountants engaged to conduct an examination of FCM must be registered with the PCAOB. The PCAOB is a non-profit corporation established by the U.S. Congress under the Sarbanes-Oxley Act of 2002 to oversee the audits of public companies and broker-dealers of securities registered with the SEC in order to protect investors and the public interest by promoting informative, accurate, and independent audit reports. The SEC has oversight authority over the PCAOB, including the approval of the PCAOB's rules, auditing and other standards, approval of its budget, and appointment of members of its board, after consultation with the Chairman of the Board of Governors of the Federal Reserve Systems and the Secretary of the Treasury. Commission Regulation 1.16(b)(1) also requires a public accountant to have undergone a PCAOB examination in order to be qualified to conduct examinations of FCMs. A PCAOB examination involves the review of the accounting firm's compliance with PCAOB issued audit, quality control, independence and ethics standards.</p> <p>For auditors of other Commission registrants, Commission Regulation 1.16 requires that auditors be duly registered, in good standing under the laws of the place of residence or principal residence. In the United States, each respective state has licensing, conduct and membership requirements developed by independent State Accountancy Boards, which are self-funded, generally through professional membership. These individual state requirements are in addition to those imposed separately through registration with the PCAOB, the AICPA, or by accountants operating subject to the SEC or CFTC's jurisdiction.</p>
4.	<p>Does the auditor oversight body have an established process for performing regular reviews of audit procedures and practices of firms that audit financial statements of public issuers?</p>
	<p>The Commission does not have authority over public issuers; this authority resides principally with the SEC. However, the Commission does have requirements applicable to auditors of its registrant's through Commission Regulation 1.16. As mentioned previously, Commission Regulation 1.16 requires that auditors be duly registered, in good standing under the laws of the place of residence or principal residence, and in the case of auditors conducting examinations of an FCM, be registered with the PCAOB. These auditors, by means of their registration with the PCAOB, are required to follow and comply with PCAOB issued standards on competency, ethics, quality, independence and auditing. The PCAOB has an extensive review program over the auditors of public issuers, as well as an examination program specifically tailored to the review of auditors of/for Broker-Dealers,</p>

	which also may be auditors of FCMs.
5.	<p>Are there standards and processes for regular assessments by the oversight body to assess whether the auditor is and remains independent, both in fact and in appearance, of the enterprises that it audits?</p> <p>Yes. By requiring outside auditors of FCMs to be registered with the PCAOB, the PCAOB routinely conducts reviews of auditors for compliance with their quality control and ethics and independence standards. In addition, Commission Regulation 1.16(b)(2) has its own independence requirements imposed on outside auditors. Commission Regulation 1.16(b)(4) also requires that the governing body of each FCM ensure that the outside auditor is duly qualified, and among other things, is in fact independent.</p> <p>Additionally, for examiners under the SRO examination program, Commission Regulation 1.52 requires that the SRO program have standards addressing, among other things, the ethics of an examiner and the independence of an examiner. As mentioned above in response to Question 2, Commission Regulation 1.52 also requires that SRO programs to be reviewed by an “examination expert” at least every three years.</p>
6.	
(a)	<p>If the oversight process is performed in coordination with similar quality control mechanisms that are in place within the audit profession, does the oversight body maintain control over key issues such as the scope of reviews, access to and retention of audit work papers and other information needed in reviews, and follow up of the outcome of reviews?</p> <p>Yes. The PCAOB remains responsible for the development and implementation of auditing standards, including the scope, and access to and retention of audit work-papers, imposed on registrant auditors, as well as the continual review of those registrants’ compliance with those standards. A similar responsibility is shared by the AICPA and respective State Accounting Licensing Boards, over auditors on non-public issuers, which may include some auditors engaged to conduct audits of certain Commission registrants.</p> <p>With respect to oversight of the SRO examinations program, Commission Regulation 1.52 establishes the requirements of the SRO examination program generally, including the scope of exams, and access to and retention of examination work papers. The specific standards of the SRO examination program are determined and agreed upon by the JAC, as discussed in response to Principle 9. Should an SRO choose not to join the JAC, the SRO would remain responsible for designing and establishing an SRO examination program consistent with the requirements of Commission Regulation 1.52. In both instances, an “examinations expert” is required to review the SRO examination program at least every three years according to certain Commission-established criteria.</p>
(b)	<p>Are reviews conducted on a recurring basis, and designed to determine the extent to which audit firms have and adhere to adequate quality control policies and procedures that address all significant aspects of auditing?</p> <p>Yes. The PCAOB has an extensive review program for conducting reviews of auditors of public issuers depending on the size of the firm’s audit practice. In addition, the PCAOB has a separate review program for auditors of Broker-Dealers, focusing specifically on issues, and quality control policies specific to that industry. In addition, under Commission Regulation 1.16(b)(4), the governing body of each FCM is responsible for evaluating the qualifications of</p>

	<p>the outside auditor, which includes, reviewing the inspection reports issued by the PCAOB. These reviews are typically done in concert with SRO examinations of each FCM in accordance with established SRO examination procedures in accordance with Commission Regulation 1.52.</p> <p>Additionally, as mentioned above, Commission Regulation 1.52 also requires that the SRO examination program be reviewed every three years by an "examination expert" assessing the design and adequacy of the SRO examination program.</p>
7.	<p>Does the auditor oversight body have the authority to stipulate remedial measures for problems detected, and to initiate and/or carry out disciplinary proceedings to impose sanctions on auditors and audit firms, as appropriate?</p>
	<p>Yes. The PCAOB has authority under the Sarbanes-Oxley Act of 2002 to impose various sanctions on auditors under its jurisdiction, including temporary or permanent bars of registration, as well as certain civil monetary penalties. In addition, the SEC and the CFTC have authority to bring civil actions against any accountant practicing before them for violation of their respective rules and regulations. Similarly, the CFTC has jurisdiction over any SRO, DSRO, the JAC and NFA for violations of Commission Regulation 1.52.</p>

<b>Principle 20 Auditors should be independent of the issuing entity that they audit</b>	
<b>Key Questions</b>	
1.	Does the regulatory framework set standards for the independence of external auditors?
	Yes. As discussed in Principle 19, Question 5, by requiring outside auditors of FCMs to be registered with the PCAOB, the PCAOB routinely conducts reviews of auditors for compliance with their quality control and ethics and independence standards. In addition, Commission Regulation 1.16(b)(2) has its own independence requirements imposed on external auditors. Commission Regulation 1.16(b)(4) also requires that the governing body of each FCM ensure that the external auditor is duly qualified, and among other things, is in fact independent.
2.	Do the standards contain restrictions relating to audit firms and individuals within the audit firm regarding financial, business or other relationships with an entity that the firm audits?
	Yes. The PCAOB independence requirements include by reference all specific independence requirements under SEC Regulation 210.2-01, which include very detailed and extensive restrictions relating to audit firms and individuals within the audit firm regarding financial, business or other relationships. In addition and consistent with the SEC's restrictions, Commission Regulation 1.16(b)(2) also contains examples of non-independence while performing certain activities and/or maintaining certain financial or business relationships with the entity.
3.	Do the standards address the following:
	(a) self-interest?
	Yes. See PCAOB Rule 3520; SEC Regulation 210.2-01; CFTC Regulation 1.16(b)(2).
	(b) self-review?
	Yes. See PCAOB Rule 3520; SEC Regulation 210.2-01; CFTC Regulation 1.16(b)(2).
	(c) advocacy?
	Yes. See PCAOB Rule 3520; SEC Regulation 210.2-01; CFTC Regulation 1.16(b)(2).
	(d) familiarity?
	Yes. See PCAOB Rule 3520; SEC Regulation 210.2-01; CFTC Regulation 1.16(b)(2).
	(e) intimidation?
	Yes. Yes. See PCAOB Rule 3520; SEC Regulation 210.2-01; CFTC Regulation 1.16(b)(2).
4.	Are there regulatory standards that govern the provision of non-audit services to an entity that an audit firm audits?
	Yes. See <i>generally</i> PCAOB Rule 3520; SEC Regulation 210.2-01; CFTC Regulation 1.16(b)(2).  Under Commission Regulation 1.16(b)(2), an accountant will not be considered independent if he or she, or his or her firm or a member thereof, performs manual or automated bookkeeping services or assumes responsibility for maintenance of the accounting records, including accounting classification decisions, of such applicant or registrant or any of its affiliates. For the purposes of CFTC Regulation 1.16(b), the term "member" means all partners in the firm and all professional employees participating in the audit or located in the office of the firm participating in a significant portion of the audit.

5.	Are auditors required to establish and maintain internal systems, governance arrangements and processes for monitoring, identifying and addressing threats to independence, including the rotation of auditors and/or senior member(s) of the audit engagement team, and ensuring compliance with the standards?
	Yes. PCAOB Auditing Standard No. 7 and PCAOB Quality Control standards impose various requirements surrounding the establishment and maintenance of various quality controls involving auditor independence and compliance with numerous auditing standards. In addition the SRO examination program is required to address the supervision, review and quality control of an examiner's work product, and to have procedures to ensure that quality control is maintained. Also, SROs are required to provide annual ethics training to all supervisory program staff and maintain independent judgement in matters related to the supervisory program. See Commission Regulations 1.52(c)(1)(i) and 1.52(d)(2)(ii)(C)(1).
6.	From the perspective of public issuers: Not Applicable to the CFTC
(a)	Is the external auditor required to be independent in both fact and appearance of the entity being audited?
(b)	Is there a governance body independent in both fact and appearance of the management of the entity (e.g., audit committee, board of corporate statutory auditors or other body independent of the entity's management) that oversees the process of selection and appointment of the external auditor?
(c)	Are governance standards intended to promote and contribute to the monitoring and safeguarding of the independence of the external auditor?
(d)	Is prompt disclosure of information about the resignation, removal or replacement of an external auditor required?
7.	Is there an adequate mechanism in place for enforcing compliance with auditor independence standards, for example, to stipulate remedial measures for problems detected and to initiate and carry out disciplinary proceedings to impose sanction on auditors and audit firms as appropriate, or to refuse to accept, or require revision of, audit reports, or for lack of independence?
	Yes. The PCAOB has authority under the Sarbanes-Oxley Act of 2002 to impose various sanctions on auditors under the PCAOB's jurisdiction, including temporary or permanent bars of registration, as well as, certain civil monetary penalties. In addition, the SEC and the CFTC have authority to bring a civil action against any accountant practicing before them for violation of their respective rules and regulations. Similarly, the CFTC has jurisdiction over any SRO, DSRO, the JAC and NFA for violations of Commission Regulation 1.52.



<b>Principle 21      Audit standards should be of a high and internationally acceptable quality</b>	
<b>Key Questions</b>	
1.	Does the regulatory framework require that financial statements included in public offering and listing particulars documents and publicly available annual reports be audited in accordance with a comprehensive set of auditing standards?
	Yes. The Commission does not have authority over public issuers; this authority resides principally with the SEC. However, Commission Regulation 1.10 requires each FCM to file certified annual financial reports containing basic financial statements. Commission Regulation 1.16 requires that an accountant's audit be done in accordance with generally accepted auditing standards. In addition, the auditors of FCMs must follow auditing standards issued by the PCAOB.
2.	Are the prevailing auditing standards of a high and internationally acceptable quality?
	Yes. Auditing standards of both the PCAOB and U.S. Generally Accepted Auditing Standards (GAAS) are of a high and internationally accepted quality.
3.	
(a)	Does the regulatory framework provide for an organization responsible for the establishment and timely updating of auditing standards?
	Yes. The PCAOB is responsible for adoption of auditing standards and is subject to direct SEC oversight. U.S. GAAS are promulgated by the Auditing Standards Board, a division of the AICPA. They are regularly reviewed and updated.
(b)	If yes, are the organization's processes open, transparent and subject to public oversight, and, if the organization is independent, is the standard setting and interpretation process undertaken in cooperation with, or subject to oversight by, the regulator or another body that acts in the public interest?
	Yes. The SEC has direct supervisory authority over the PCAOB. The Auditing Standards Board includes membership from academia, representatives from the National Association of State Boards of Accountancy and private industry.
4.	Is there an adequate mechanism in place for enforcing compliance with auditing standards?
	Yes. As discussed above in Principle 19, Question .1, the Commission's framework for overseeing auditors is three-pronged with respect to the financial and operational compliance of registered intermediaries. First, the Commission requires that all financial statements and schedules of its registrants be at least annually certified (opinion expressed) by a qualified outside accountant/auditor in accordance with requirements of Commission Regulation 1.16. Among other things, these qualified outside accountants must, at a minimum, be duly registered, in good standing and be independent. Second, the Commission oversees a self-regulatory examination regime, wherein SROs/DSROs are responsible for conducting financial and operational audits over their respective members. Commission Regulation 1.52 outlines this SRO examination framework, describing the function, quality and competency of examiners and evaluation of these examinations. Finally, Commission Staff conducts reviews of SROs' examination programs, whereby Commission Staff selects a sample of the SRO's work papers to review. In addition, the Commission conducts limited-scope reviews of registrants in "for cause" situations.

<b><i>This Principle is not applicable to the CFTC.</i></b>	
<b>Principle 22</b>	<b>Credit rating agencies should be subject to adequate levels of oversight. The regulatory system should ensure that credit rating agencies whose ratings are used for regulatory purposes are subject to registration and ongoing supervision.</b>
<b>Key Questions</b>	
<p>Section 939A(a) of the Dodd-Frank Act directs each Federal agency to review “any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument [and] any references to or requirements in such regulations regarding credit ratings.” Second, Section 939A(b) requires that each Federal agency “modify any such regulations identified by the review conducted under subsection (a) to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations.” The Commission reviewed its regulations and identified instances in which credit ratings were referred to or relied upon. The identified regulations could be categorized into two groups: (1) those that rely on ratings to limit how Commission registrants may invest or deposit customer funds; and (2) those that require disclosing a credit rating to describe an investment’s characteristics. The Commission subsequently removed any reference to or requirement of reliance on credit ratings in its regulations.</p>	
<b>Registration:</b>	
1.	
(a)	Does the jurisdiction have a definition of “credit rating” and/or “credit rating agency” or otherwise define a scope of activities for the purpose of imposing registration and supervision requirements on entities that engage in the business of determining and issuing credit ratings that are used for regulatory purposes?
(b)	Are CRAs located in the jurisdiction and whose ratings are used for regulatory purposes in the jurisdiction subject to registration (“regulated CRAs”)?
(c)	Do the jurisdiction’s registration requirements provide the Regulator with the ability to obtain all information it deems necessary from a CRA seeking registration in order to determine whether the requirements for registration have been fulfilled?
(d)	If a CRA’s ratings are used for regulatory purposes but the CRA itself is not located in the Regulator’s market and the Regulator does not require registration or oversight of the CRA in question, has the Regulator made a reasonable judgment to ensure that the CRA is subject to registration and oversight as required by Principle 22?

<i>Ongoing Supervision:</i>	
2.	
(a)	Do the jurisdiction's requirements provide the Regulator with the ability to obtain all information about a regulated CRA that the Regulator deems necessary to perform adequate oversight of the regulated CRA?
(b)	Are CRAs whose ratings are used for regulatory purposes in the jurisdiction and located in the jurisdiction supervised on an ongoing basis, subject to examination by the Regulator, and subject to enforcement of the jurisdiction's requirements?
<i>Registering Authority:</i>	
3.	Does the Regulator have the power to:
(a)	Refuse to register a CRA if the registration requirements have not been met, and to withdraw, suspend or condition a registration or authorization in the event of a failure of a regulated CRA to meet relevant requirements?
(b)	Impose adequate measures and sanctions to address a failure of a regulated CRA to meet relevant requirements?
<i>Oversight Requirements: Quality and Integrity</i>	
4.	Does oversight of regulated CRAs incorporate requirements that address whether:
(a)	Regulated CRAs adopt and implement written procedures and methodologies designed to ensure that they issue initial credit ratings based on a fair and thorough analysis of all information known to the CRA that is relevant to its analysis according to the CRA's published rating methodology, and except for credit ratings that clearly indicate they do not entail ongoing surveillance, that the regulated CRA updates credit ratings as new information becomes available according to the regulated CRA's published rating methodology for monitoring credit ratings?
(b)	Regulated CRAs maintain internal records to support their credit ratings?
(c)	Regulated CRAs have sufficient resources to carry out high-quality credit assessments?
<i>Oversight Requirements: Conflicts of Interest</i>	
5.	Does oversight of regulated CRAs incorporate requirements that address whether:
(a)	Regulated CRA credit rating decisions are independent and free from political or economic pressures and from conflicts of interest arising due to the regulated CRA's ownership structure, business or financial activities, securities or derivatives trading, or the financial interests of the regulated CRA's employees (including securities and derivatives trading by the employees and their compensation arrangements)?
(b)	Regulated CRAs (1) identify, and (2) eliminate, or manage and disclose, as

	appropriate, any actual or potential conflicts of interest that may influence the opinions and analyses regulated CRAs make or the judgment and analyses of the individuals the regulated CRAs employ who have an influence on ratings decisions?
(c)	Regulated CRAs disclose actual and potential conflicts of interest arising from the nature of compensation arrangements for producing credit ratings?
<i>Oversight Requirements: Transparency and Timeliness</i>	
6.	Does oversight of regulated CRAs incorporate requirements that address whether:
(a)	Regulated CRAs distribute their credit ratings in a timely manner?
(b)	Regulated CRAs disclose credit ratings on a non-selective basis?
	N/A
(c)	Regulated CRAs publish sufficient information about their procedures, methodologies and assumptions so that outside parties can understand how a rating was arrived at by the regulated CRA, and the attributes and limitations of such a rating?
(d)	Regulated CRAs publish sufficient information about the historical default rates of their credit ratings so that interested parties can understand the historical performance of their credit ratings?
<i>Oversight Requirements: Confidential Information</i>	
7.	Does oversight of regulated CRAs incorporate requirements that address whether CRAs protect non-public information:
(a)	provided by issuers so that such information is only used for the purposes related to their rating activities; and
(b)	with respect to pending rating actions?

<b>Principle 23</b>	<b>Other entities that offer investors analytical or evaluative services should be subject to oversight and regulation appropriate to the impact their activities have on the market or the degree to which the regulatory system relies on them.</b>
<b>Key Questions</b>	
1.	<p>Does the regulator periodically consider whether the different types of entities that provide analytical or evaluative services warrant regulation and oversight because of the impact of their activities on the market or because of the degree to which the regulatory system relies on them?</p> <p>See responses to Principle 9, Self-Regulatory Organizations.</p> <p>The Commission's regulations require that any registrant that uses the services of another to comply with a Core Principle must at all times remain responsible for the performance of any regulatory services received.</p> <p>Section 1a(12) of the CEA defines the term CTA as any person who for compensation or profit:</p> <ul style="list-style-type: none"> <li>Engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in commodity interests; or</li> <li>As part of a regular business, issues or promulgates analyses or reports concerning the value or advisability of trading in commodity interests.</li> </ul> <p>Pursuant to Section 4m of the CEA, CTAs are required to be registered with the CFTC. The CEA provides exemptions for CTAs that do not engage in a significant amount of advising with respect to commodity interests. Specifically, CTAs that advise 15 or fewer persons during a 12 month period and that do not hold themselves out as a CTA to the public are exempt from registration. Additionally, where a CTA is registered with the SEC, and its business does not consist primarily of acting as a CTA, and it does not act as a CTA to a commodity pool that is engaged primarily in trading commodity interests, that CTA is not required to be registered with the CFTC.</p>
2.	<p>Where the regulator identifies the need for regulation and oversight, is the regulation and oversight put into place appropriate to the risks posed by these types of entities?</p> <p>Yes. With respect to CTAs, where a CTA is required to be registered, the CTA is subject to the CFTC's compliance regime as set forth in Part 4 of the CFTC's regulations. CFTC Regulation 4.30 prohibits CTAs from holding customer funds as a protection against potential fraud or misappropriation. CFTC Regulation 4.31 requires all registered CTAs to provide a Disclosure Document to all prospective clients, which must contain the information described in CFTC Regulation 4.34 and 4.35, including, but not limited to:</p> <ul style="list-style-type: none"> <li>The past performance of the offered trading program;</li> <li>The principal risk factors of investing in the program;</li> <li>A complete discussion of each fee assessed by the CTA;</li> <li>A complete description of the trading program; and</li> <li>A full description of all actual and potential conflicts of interest.</li> </ul>

CFTC Regulation 4.27 also requires all CTAs that are registered or required to be registered to file a Form CTA-PR on an annual basis.	
3.	With respect to sell-side securities analysts:
(a)	Does regulation contain provisions directed at eliminating, avoiding, managing or disclosing conflicts of interest that can arise from:
(i)	Analysts' trading activities or financial interests?
(ii)	The trading activities or financial interests of the entities that employ them?
(iii)	The business relationships of the entities that employ them?
(iv)	The reporting lines for analysts and their compensation arrangements?
Yes. See Answers to Principle 8, Questions 1, 2, and 3.	
(b)	Does regulation contain provision directed at firm compliance systems and senior management responsibility:
(i)	Requiring written internal procedures or controls to identify and eliminate, manage or disclose actual and potential analyst conflicts of interest?
(ii)	Requiring procedures to eliminate or manage the undue influence of issuers, institutional investors and other outside parties upon analysts?
(iii)	Requiring complete, timely, clear, concise, specific and prominent disclosures of actual and potential conflicts of interest?
Yes. See Answers to Principle 8, Questions 1, 2, and 3.	
(c)	Does regulation contain provisions directed at integrity and ethical behaviour, such as requiring analysts and/or the firms that employ analysts to act honestly and fairly with clients?
Yes. See Answers to Principle 8, Questions 1, 2, and 3.	

<b>PRINCIPLES RELATING TO COLLECTIVE INVESTMENT SCHEMES AND HEDGE FUNDS (24-28)</b>	
<b>Principle 24</b>	<b>The regulatory system should set standards for the eligibility, governance, organization and operational conduct of those who wish to market or operate a collective investment scheme.</b>
<b>Key Questions</b>	
<i>Eligibility Criteria</i>	
1.	Does the regulatory system set standards for the eligibility of those who wish to:
(a)	Market a CIS?
(b)	Operate a CIS?
<p>Yes, to all of the above. The CEA, as amended by the Dodd-Frank Act, defines a CPO in Section 1a(11) as any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests. Commodity interest is defined in CFTC Regulation 1.3(yy) and includes, among other things, futures, options, and swap transactions. Section 1a(10) of the CEA and CFTC Regulation 4.10(d) define a commodity pool as any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests. Under Section 4m of the CEA, all individuals and firms, with limited exceptions, that intend to do business as a CPO must register with the CFTC.</p> <p>In 1984, the CFTC delegated to NFA the registration of CPOs. NFA reviews applications for registration to determine, among other things, whether an application is subject to statutory disqualification under Sections 8a(2) and (3) of the CEA. NFA performs an extensive background check, which includes fingerprinting of natural person principals and related Federal Bureau of Investigations clearances, to determine whether a statutory disqualification exists. For foreign applicants, NFA may perform additional background checks such as checks with foreign regulatory and self-regulatory bodies and Interpol. NFA also imposes proficiency testing requirements upon individual applicants.</p> <p>The fitness requirements for all market intermediaries are incorporated into the basic registration application form, Form 7-R. Form 7-R requires disclosure of the applicant's name, address, branch offices, and principals, as well as detailed information about the disciplinary and criminal history of the firm. A Form 8-R, which requires similar information to the Form 7-R, is required for each natural person principal and AP applicant. CFTC Regulation 1.3(aa) defines an AP of a CPO as a partner, employee, consultant, agent, or other individual involved with the solicitation of funds, securities, or property for participation in a commodity pool, or the supervision of any person or persons so engaged. Additionally, applicants for CPO registration who have previously operated a CIS under an exemption from registration pursuant to CFTC Regulation 4.13 must accompany their Form 7-R with financial statements consistent with the applicable provisions of Part 4 of the CFTC's regulations.</p> <p>Part 4 of the CFTC's regulations mandate the filing with NFA, as a delegate of the CFTC, of</p>	

	Disclosure Documents for review prior to their use by a CPO in its solicitation of participants in the commodity pool. Additionally, the CPO must file with NFA the annual financial statements for the pool to determine compliance with the provisions of Part 4 of the Commission's regulations.
2.	Do the eligibility criteria for a CIS operator include the following:
(a)	Honesty and integrity of the operator?
(b)	Having appropriate and sufficient human and technical resources to ensure that is capable of carrying out the necessary functions of CIS operator?
(c)	Financial capacity of the CIS or the CIS operator that would allow the launching and operation of the CIS in appropriate conditions?
(d)	Ability to perform specific powers and duties?
(e)	Having or employing an appropriate identification, monitoring and management of risks, based on, among other things, the size, the complexity and the risk profile of the CIS?
(f)	Having internal controls and compliance arrangements sufficient to ensure it can carry out its business diligently, effectively, honestly and fairly?
	<p>Yes. The CEA specifies certain factors that would disqualify an applicant from registering with the CFTC, including prior proceedings in which the applicant was found to have violated the law or in which the applicant was formally enjoined from engaging in certain activities. The CFTC has authorized NFA to receive and review registration applications and grant or deny registrations, subject to appeal by the applicant to the CFTC and the courts. NFA performs an extensive background check to determine whether a disqualification exists. Three essential elements of the background check are:</p> <ul style="list-style-type: none"> <li>• The Disciplinary Information questions on the application forms, which require the applicant to disclose and supply detailed information concerning possible disqualifications;</li> <li>• A check against the Financial Industry Regulatory Authority's ("FINRA's") Central Registration Depository database; and</li> <li>• The fingerprint cards provided by individuals.</li> </ul> <p>Although Form 7-R is only required of entities applying for registration, Form 8-R, as discussed above, is required of each natural person who is a principal of the applicant, as well as for individuals seeking AP registration. Persons filing a Form 8-R also must provide fingerprints on a card provided by NFA. In addition, Form 8-R requires disclosure of information on the employment, residential, educational, disciplinary and criminal history of the individual principal or applicant. The CFTC defines "principal" under CFTC Regulation 3.1 as a sole proprietor, general partner, director, officer, manager or managing member, or person who is in charge of a principal business unit, division or function</p>



subject to CFTC regulation, or any person occupying a similar position who exercises a controlling influence over the regulated activities of the firm. In addition, any holder or beneficial owner of 10 percent or more of the outstanding shares of stock in the firm, or any person who has contributed 10 percent or more of the firm's capital, is a principal. It is through this requirement that the CFTC and NFA can consider the knowledge, resources, skills and ethical attitude of senior management, directors and substantial owners/shareholders. However, it should be noted that the CFTC uses an objective approach to assessing ethical attitude, based, in part, on past conduct that could indicate a potential lack of appropriate ethical standards. No subjective inquiry is performed with respect to the business model or management capabilities of the applicant for registration. With regard to APs, however, each AP applicant must take and pass proficiency tests before being able to market commodity interest investments to potential customers.

Moreover, all CFTC registrants, including CPOs, are subject to Section 4o(1) of the CEA, which prohibits, among other things, engaging in any transaction practice, or course of business which operates as a fraud or deceit upon any client or participant, or prospective client or participant.

There are no specific requirements in the CEA or CFTC regulations mandating specific human and technical resources to register as a CPO. However, as explained below, the CFTC and NFA monitor CPOs on an ongoing basis to determine their compliance with a myriad of obligations in the Part 4 regulations, *e.g.*, audited financial statements and Disclosure Documents, and entities intending to register as CPOs and operate commodity pools are implicitly required to have the human and technical resources necessary to meet these compliance obligations. Additionally, the CFTC has recently implemented data collection on Form CPO-PQR, which requires in-depth reporting of a pool's positions, counterparties, risk metrics, and other operational considerations. Together, these requirements necessitate the use of often substantial technical and human resources.

CPOs are not required to comply with any minimum financial requirements.

APs are required to pass certain proficiency tests before soliciting customers for participation in a pool operated by a CPO. Principals are not required to have the ability to perform any specific powers or duties, aside from those implicit in meeting the established compliance obligations of CFTC regulations and NFA rules. Their educational and professional backgrounds are required by CFTC Regulation 4.24(f) to be included in Disclosure Documents distributed to pool participants.

Pursuant to CFTC Regulation 4.21, CPOs are required to provide potential participants in their commodity pools a Disclosure Document prepared in accordance with CFTC Regulations 4.24 and 4.25. CFTC Regulation 4.24(g) requires CPOs to include in the Disclosure Document a summary of the principal risk factors of the offered commodity pool. The principal risk factor discussion must be tailored to the individual commodity pool, including risks related to the volatility, leverage, and counterparty creditworthiness, as applicable to the types of trading programs to be followed, trading structures to be employed, and investment activities expected to be engaged in by the offered commodity pool. CFTC Regulation 4.24(g) therefore requires CPOs to be able to identify and

understand the principal risk factors of their investment schemes, in order to accurately and fully disclose said risks to potential commodity pool participants. Additionally, CFTC Regulation 4.26 provides that if a CPO knows or should know that the Disclosure Document is materially inaccurate or incomplete in any respect, including the principal risk factors, the CPO must correct that defect and distribute the correction to all existing participants, as well as any previously solicited potential participants prior to the CPO accepting or receiving their funds, with limited exceptions, within 21 calendar days of the date upon which the CPO first knows or has reason to know of the defect. The combination of these CFTC regulations requires CPOs to continuously monitor and assess the risks of their commodity pools, and to not only make pool participants aware of these risks prior to their initial investment, but to ensure that the participants are aware of any material changes for as long as they are invested in the commodity pool.

Additionally, all CPOs that are registered or required to be registered are subject to compliance with CFTC Regulation 4.27, which requires CPOs, depending upon their assets under management, to provide information regarding the relationships and investments of their operated pools. CPOs with assets under management in excess of \$500 million are required to provide the following information: pool borrowings, counterparty credit exposure, pool strategy, derivatives exposure, and a full schedule of investments. Further, CPOs with greater than \$1.5 billion in assets under management must provide the following information to the CFTC: their operated pools' geographical exposure, liquidity, and risk testing based upon a number of specific scenarios.

The CEA and CFTC regulations form a regulatory system for CPOs that is primarily disclosure-based. This requires CPOs to, among other things, evaluate the materiality of events and transactions; to include material information in their periodic Account Statements, Disclosure Documents, and Annual Reports containing financial statements certified by an independent accountant; and to adequately disclose the risks of commodity interest investments, the educational and business background of CPOs' principals and senior management staff, and any potential or actual conflicts of interest involving the CPO or its staff to potential CIS participants. The CFTC believes its detailed compliance obligations require CPOs to establish internal controls and procedures in order to maintain and demonstrate compliance with the CEA and CFTC regulations. Furthermore, as noted above, NFA assists the CFTC in the oversight of CPOs. NFA also requires CPOs to be NFA Members, and therefore, to be subject to and comply with the panoply of NFA Member rules, which sometimes require the establishment of policies and procedures to address certain issues. One example is NFA Compliance Rule 2-38, which requires all NFA Members to establish written business continuity and disaster recovery plans – a related interpretive notice requires the plan to be distributed to key personnel and to be tested periodically. NFA also has rules that are applicable to all entities required to be NFA Members. The combination of the two systems is designed to require CPOs to operate their commodity pools diligently, effectively, honestly, and fairly.

3. Does the regulatory system provide for effective mechanisms to assess compliance with the criteria referred to in Questions 2(a) to 2(f)?

Yes. As discussed below, NFA conducts regular examinations of CPOs operating commodity pools, pursuant to authority delegated to it by the CFTC. NFA also reviews

	Annual Reports from CPOs containing, among other things, independently certified financial statements of the pools, and regularly reviews Disclosure Documents drafted by CPOs before they can be distributed to potential pool participants. Additionally, Part 21 of the CFTC's regulations allows the CFTC to engage in special calls, facilitating CFTC access to account ownership and commodity interest transaction information in the form and manner, and at the time, the CFTC requests it.
4.	Does the regulatory system set standards for the CIS governance seeking to ensure that CIS are organized and operated in the interests of CIS investors, and not in the interests of CIS connected persons?
	Yes. CFTC Regulation 4.20 requires a CPO to operate its pool as an entity cognizable as a legal entity separate from the CPO. That regulation also requires that the pool accept funds, securities, or other property from its participants in the name of the pool, rather than the CPO, and it prohibits the commingling of pool assets with the property of any other person. NFA regulations also provide specific prohibitions and limitations on the circumstances under which a CPO may enter into transactions with a pool it operates for the benefit of the pool. The CFTC regulatory system further ensures that commodity pools are operated in the interests of the participants, rather than persons connected to the CPO or pool, through a highly detailed disclosure regime. CFTC Regulation 4.24 requires CPOs to disclose to participants, in addition to the principal risks and performance of the investment activity of the commodity pool, a detailed description of any fees and expenses expected to be incurred; any actual or potential conflicts between the CPO, the trading manager, the commodity trading advisor, or any principals, or any other material conflicts; a full description of any material transactions between the CPO and any person affiliated with a person providing services to the pool, among other significant factors; the extent of any ownership in the pool by the CPO, trading manager, major commodity trading advisors, or principals. CFTC Regulation 4.24(w) requires the CPO to disclose all material information to prospective and existing pool participants, even if the information is not explicitly required by any other CFTC regulation.
5.	Does the authorization/registration of CIS take into account the possible need for international cooperation in the case of CIS marketed across jurisdictions or where promoters, managers or custodians are located in several different jurisdictions?
	Yes. For foreign applicants, NFA may perform additional background checks such as checks with foreign regulatory and self-regulatory bodies and Interpol. In certain cases, NFA consults with foreign regulatory authorities to assess the fitness of applicants for registration whose applications disclose prior employment with a non-U.S. firm, or where the U.S. registrant has foreign principals. In addition, as discussed in response to Principle 14, Question 4, above, the CFTC recently entered into MOUs with 29 European authorities related to supervision of CIS and the alternative investment fund industry. Moreover, other less specific Cooperative Arrangements could be used in order to cooperate with respect to CIS.
<i>Supervision and Ongoing Monitoring</i>	
6.	Is the regulator responsible for monitoring ongoing compliance with the standards applicable to CIS and CIS operators? In particular, does the regulator have clear responsibilities and powers with respect to:
(a)	Registration or authorization of a CIS?

(b)	Inspections to ensure compliance by CIS operators?
(c)	Investigation of suspected breaches?
(d)	Remedial action in the event of breach or default?
	<p>Yes, to all of the above. The CFTC and NFA are responsible for oversight of CPOs. As discussed in the response to Principle 24, Question 1, the CFTC has delegated to NFA responsibility for registration of CPOs.</p> <p>NFA, as an RFA, has oversight responsibility for CPOs and has instituted a program that monitors compliance by CPOs with all applicable CFTC regulations and NFA rules.</p> <p>Pursuant to Section 17 of the CEA, as a RFA, NFA must:</p> <ul style="list-style-type: none"> <li>• Establish training standards and proficiency testing for persons involved in the solicitation of transactions, supervisors of such persons and all persons for which it has registration responsibilities, and a program to audit and enforce compliance with such standards; and</li> <li>• Establish minimum standards governing sales practices of its members and persons associated therewith for transactions subject to provisions of the CEA.</li> </ul> <p>Additionally, when an entity seeks to be registered as a CPO, it must submit a Disclosure Document to NFA, as the CFTC's delegate, for review to determine compliance with CFTC regulations as well as NFA rules prior to holding itself out to be a duly registered CPO and soliciting participants. CFTC staff regularly reviews NFA's review of Disclosure Documents as part of the CFTC's oversight of NFA.</p> <p>NFA also conducts examinations of registered CPOs generally within the first year after becoming active and then every 3 to 4 years thereafter to ensure compliance with the CFTC's regulations and NFA's rules. NFA conducts a risk-based analysis to determine the frequency with which it conducts examinations of CPOs. This analysis considers many different business factors, as well as information such as customer complaints or concerns that arise during NFA's review of a firm's Disclosure Document, financial statement or promotional material.</p> <p>In the event that a registered CPO fails to comply with its regulatory obligations, NFA's Business Conduct Committee (BCC) is empowered to take action against the entity and impose sanctions, including expulsion, suspension, fine, censure, or any other fitting penalty, for any violation of its rules. Similarly, the CFTC, through its DOE, may impose civil penalties for violations of CFTC regulations ranging from a ban from registration to a monetary penalty, as well as seek criminal penalties.</p>
7.	Does the ongoing monitoring involve review of reports submitted to the regulator with regard to CIS and entities involved in the operation of a CIS (CIS operators, custodians, etc.) on a routine basis or on a risk assessment basis?
	Yes. NFA routinely reviews annual financial statements and Disclosure Documents filed by registered CPOs, and CFTC staff conducts ongoing oversight of NFA with respect to these responsibilities.

8.	Does the ongoing monitoring involve where appropriate performance of on-site inspections of entities involved in operating CIS (CIS operators, custodians, etc.)?
	Yes. NFA conducts regular on-site inspections of registered CPOs as part of its ongoing monitoring of their operations. Additionally, as stated previously, NFA conducts a risk-based analysis to determine the frequency with which it conducts examinations of CPOs. This analysis considers many different business factors, as well as information such as customer complaints or concerns that arise during NFA's review of a firm's Disclosure Document, financial statement or promotional material. NFA generally conducts examinations of registered CPOs within the first year after becoming active and then every 3 to 4 years thereafter.
9.	Do the regulatory authorities proactively perform investigative activities in order to identify suspected breaches with respect to entities involved in the operation of a CIS?
	Yes. Although the CFTC retains authority to conduct inspections, NFA has primary responsibility for inspections of CPOs, and performs periodic examinations as discussed above.
10.	Is the operator of a CIS subject to a general and continuing obligation to report to the regulatory authority or investors, either prior to or after the event, any information relating to material changes in its management or organization or in the by-laws of the CIS or the CIS operator?
	Yes. CFTC Regulation 4.26 requires each CPO to correct any defect in its Disclosure Document that it knows to be materially inaccurate or incomplete in any respect. The correction must be made to all existing participants within 21 days of the date upon which the CPO first knows or has reason to know of the defect. Any amendments to the Disclosure Document must be filed electronically with NFA. In addition, CFTC Regulation 4.22(a) requires that the periodic Account Statement distributed for the pool disclose any material business dealings involving the CPO and any other persons providing services to the pool if they have not previously been disclosed to the pool's participants. NFA also requires CPOs to provide annual updates regarding their registration information and business operations. CPOs relying on registration exemptions or definitional exclusions provided under CFTC Regulations 4.13 and 4.5 must annually affirm their reliance on the exemption or exclusion through an electronic filing with NFA, or if applicable, notify NFA of a material change in their operations, such that the CPO can no longer rely on the exemption or exclusion and must apply for registration, within 60 days of the calendar year end. Also, with respect to CFTC Regulations 4.13 and 4.5, with each new commodity interest position, CPOs continually assess their pools' compliance with the <i>de minimis</i> thresholds outlined in those regulations.
11.	Does the regulatory system assign clear responsibilities for maintaining records on the organization and business of the CIS operator? Does the regulatory system provide for the keeping of books and records in relation to transactions involving CIS assets and all transactions in CIS shares or units or interests?
	Yes. CFTC Regulation 4.23 states that each CPO must make and keep books and records relating to the pool as well as to its operation as a CPO in an accurate, current and orderly manner in its main business office and in accordance with CFTC Regulation 1.31. According to these regulations, records must be made available to the CFTC and DOJ.

<i>Conflicts of Interest and operational conduct</i>	
12.	Are there provisions:
(a)	To prohibit, restrict or manage (including if appropriate by disclosure) certain conduct likely to give rise to conflicts of interest between a CIS and its operators or their associates or connected parties?
Yes. CFTC Regulation 4.24(j) requires a CPO to include in its Disclosure Document a full description of any actual or potential conflicts of interest regarding any aspect of the pool on the part of the CPO, the trading manager (if any), any major CTA, the CPO of any major investee pool, any principal of the foregoing entities, and any other persons providing services to the commodity pool. The CPO also must describe any other material conflict of interest with respect to the pool.	
(b)	To require a CIS operator to seek to minimize potential conflicts of interest and ensure that any conflicts that do arise are identified and properly managed by taking appropriate actions (including, where appropriate, through disclosure) so that the interests of investors are not adversely affected?
CFTC regulations do not mandate that a CPO take any actions to minimize conflicts of interest; rather, CFTC Regulation 4.24(j) requires the disclosure of a full description of any actual or potential conflicts of interest regarding any aspect of the pool on the part of the CPO, the trading manager (if any), any major CTA, the CPO of any major investee pool, any principal of the foregoing entities, and any other persons providing services to the commodity pool.	
13.	
(a)	Does the regulatory system require the CIS operator to comply with operational conduct standards?
(b)	In particular, is the CIS operator required to act in the best interest of investors and in accordance with the principle of fair treatment?
Yes. See responses to Principle 24, Questions 2, 4, 11, and 12. A CPO of commodity pools that are organized as limited liability companies or limited partnerships, and who serves as the managing member or general partner of such pools, may also have specific obligations regarding its conduct and a duty to act in the best interests of the pool's participants arising out of the applicable state statutory or common law.	
14.	Does the regulatory system address the regulatory issues associated with:
(a)	Best execution?
(b)	Appropriate trading and timely allocation of transactions?
(c)	Churning?
(d)	Related party transactions?
(e)	Underwriting arrangements?
(f)	Due diligence in the selection of investments?



(g) Fees and expenses, in order to ensure that no unauthorized charges or expenses are levied against a CIS or CIS investors and that commission rebates, soft commission arrangements and inducements do not conflict with the CIS operator's duty to act in the best interest of investors?

Yes, to all of the above. Within the CFTC's disclosure-based regime, CPOs are responsible for adhering to trading strategies and other information set forth in the Disclosure Document and other documents governing the operation of the pool, and are required under CFTC Regulation 4.24(h)(2) to disclose any material restrictions or limitations on trading.

With respect to CPOs, CFTC Regulation 4.24(k) requires that, if there are any material transactions or arrangements for which there is no publicly disseminated price between the pool and any person affiliated with a person providing services to the pool, the CPO must disclose a full description of such arrangements, including a discussion of the costs associated therewith.

Additionally, CFTC Regulation 1.35(b)(5) specifically governs post-execution allocation of bunched orders and provides that specific account identifiers for accounts included in bunched orders need not be recorded at the time of order placement or upon report of execution if: (1) the person placing and directing the allocation of an order eligible for post-execution allocation has been granted written investment discretion with respect to the customer account; (2) eligible account managers must make certain information available to customers, including the general nature of the allocation methodology to be used, whether accounts in which the manager has an interest have been included in the bunched order, and a summary of data sufficient to compare one customer's results with another customer's or the manager's; (3) the orders eligible for post-execution allocation must be allocated by an eligible account manager as soon as practicable after the entire transaction is executed or not later than the end of the day on which the order is executed, be allocated in a fair and equitable manner, and be in accordance with an allocation methodology that is objective and specific to permit independent verification of its fairness; and (4) eligible account managers must make available upon request of any representative of the CFTC, DOJ, or other appropriate regulatory agency records sufficient to demonstrate that all allocations meet the standards articulated in CFTC Regulation 1.35(b)(5) and to permit reconstruction of the handling of the order from the time of placement to the allocation.

Further, CFTC Regulation 1.46 governs the application and closing out of offsetting and short positions by FCMs and provides that where an FCM purchases any commodity for future delivery for a customer when the account of such customer at the time of such purchase has a short position in the same future of the same commodity on the same market or sells any commodity for future delivery for a customer when the account of such customer at the time of such sale has a long position in the same future of the same commodity on the same market, the FCM must apply such purchase or sale against such previously held short or long futures position and promptly furnish the customer with a statement showing the financial result of the transactions involved. The FCM is required to perform the same function with respect to the purchase or sale of puts and calls with

respect to options, with the exception of providing a statement to the customer. Under CFTC Regulation 1.46(b), where the short or long futures or option position in such customer's or option customer's account immediately prior to such offsetting purchase or sale is greater than the quantity purchased or sold, the FCM must apply such offsetting purchase or sale to the oldest portion of the previously held short or long position, absent specific instructions from the customer to the contrary. CFTC Regulation 4.24(h)(2) requires the CPO to disclose the manner in which the FCMs holding the pool's accounts will treat offsetting positions pursuant to CFTC Regulation 1.46, if the method is other than to close out all offsetting positions, or to close out offsetting positions other than on a first-in, first-out basis.

While there are no requirements in the CEA or CFTC regulations regarding the CPO's due diligence in the selection of investments for its commodity pool, CFTC Regulation 4.24(h) requires CPOs to provide a detailed description of the commodity pool's investment program, including the types of commodity interests and other investments the pool will trade, the trading programs of any commodity trading advisors the CPO will employ, and the trading programs of funds or commodity pools in which the CPO plans to invest pool assets. CFTC Regulation 4.25 also requires detailed past performance statistics and information to be included in a CPO's Disclosure Document.

CFTC Regulation 4.24(i) requires CPOs to include in their Disclosure Documents a complete description of each fee, commission and other expense which the CPO knows or should know has been incurred by the commodity pool for its preceding fiscal year and is expected to be incurred by the pool in its current fiscal year, including fees or other expenses incurred in connection with the pool's participation in investee commodity pools and funds. CFTC Regulation 4.22(c) requires the distribution to pool participants of an Annual Report, including among other things financial statements of pool investments, and CFTC Regulation 4.22(d)(1) requires that such statements be presented and computed in accordance with generally accepted accounting principles consistently applied, and that the financial statements be audited by an independent public accountant. This serves as an independent check on the operations of the commodity pool by the CPO.

#### *Delegation*

15. Does the regulatory system provide for clear indication of circumstances under which delegation is allowed and is there prohibition of systematic and complete delegation of core functions of the CIS operator to the extent that there is a transformation, gradual or otherwise, into an empty box?

Neither the CEA nor CFTC regulations prohibit a CPO from delegating functions to another person or entity. Although the CPO may delegate its functions to another person or entity, the CPO remains legally responsible for its obligations under the CEA and CFTC regulations despite any delegations to any other parties. Through CFTC staff letters allowing for such delegation, the person or entity to whom the CPO delegates its functions is required to register with the CFTC as a CPO with regard to the commodity pool in question.

Additionally, CFTC Regulation 4.23 allows CPOs to rely on third-party recordkeepers, who may be the commodity pool administrator, distributor, or custodian, or a bank or registered broker or dealer acting in a similar capacity with respect to the commodity



	pool. The books and records are maintained by the third-party must be kept in accordance with CFTC Regulation 1.31 and the conditions in CFTC Regulation 4.23, and made available for inspection by the CFTC, generally within 24 hours of such a request.
16.	If delegation is permitted, is the delegation done in such a way so as not to deprive the investor of the means of identifying the company legally responsible for the delegated functions? In particular:
(a)	Is the CIS operator responsible for the actions or omissions, as though they were its own, of any party, to whom it delegates a function, including compliance with the rules of conduct and other operating conditions?
(b)	Does the regulatory system require the CIS operator to retain adequate capacity and resources and have in place suitable processes to monitor the activity of the delegate and evaluate the performance of the delegate?
(c)	Can the CIS operator terminate the delegation and make alternative arrangements for the performance of the delegated function where appropriate?
(d)	Are there requirements for disclosure to investors in relation to the delegation arrangements and the identity of the delegates?
(e)	Does the regulatory system allow the regulator to take appropriate actions in case of delegations which may give rise to a conflict of interest between the delegate and the investors?
	As set forth above, CPOs are not prohibited from delegating functions to another person or entity. A CPO, however, remains legally responsible for its obligations under the CEA and CFTC regulations, as it is held jointly and severally liable with the entity to whom the CPO delegates its functions where the delegate is a related party. Furthermore, the entity to whom the CPO delegates its functions and responsibilities must be registered with the CFTC as a CPO, and its registration status is publicly available through NFA's website. Regulatory oversight is maintained through periodic audits of CPOs by NFA, with oversight of reviews of NFA by the CFTC. Generally speaking, delegation by a CPO is performed through a contractual arrangement, and the CPO's ability to terminate that arrangement would be dependent upon the terms of the contract between the CPO and the person or entity to whom the CPO is delegating its functions. Moreover, the CPO is required under CFTC Regulation 4.24 to disclose information about entities and individuals who provide services to the commodity pool as well as any conflicts of interest that may arise and any related party transactions, i.e., transactions between the CPO or commodity pool and any person affiliated with a person or entity providing services to the commodity pool.
17.	If delegation is permitted, is the delegation done in such a way so as not to jeopardize the ability of the regulator to effectively access data related to the delegated functions, either directly through the delegate(s) or through the CIS operator?
	Yes. Historically, in approving requests for relief allowing CPOs to delegate their functions to another CPO, CFTC staff has required that the delegate CPO be registered with the CFTC (and thus, also an NFA Member subject to NFA's membership rules). The delegate

CPO, as a CFTC registrant, is subject to all of the compliance obligations discussed above, including, but not limited to, the recordkeeping requirements in CFTC Regulations 4.23 and 1.31, which requires the CPO to maintain books and records in an accurate, current, and orderly manner, and to allow the CFTC or DOJ access to the CPO's books and records upon request. Third-party service providers, to the extent they assist the CPO in meeting its compliance obligations under the CEA and CFTC regulations, are required to provide the CFTC access to the records and information meeting those obligations.

<b>Principle 25      The regulatory system should provide for rules governing the legal form and structure of CIS and the segregation and protection of client assets.</b>	
<b>Key Questions</b>	
<i>Legal Form/Investors' Rights</i>	
1.	Does the regulatory system provide for requirements as to the legal form and structure of CIS that delineate the interests of participants and their related rights?
	Yes. CFTC Regulation 4.20(a) generally requires that a CPO operate its pool as an entity cognizable as a legal entity separate from that of the CPO. The CFTC may exempt a CPO from this requirement if it sets up a corporation that: (1) represents in writing that each participant will be issued stock or other evidence of ownership in the corporation for all property received from participants; (2) demonstrates that it has adequate procedures in place to ensure that all property from participants is received in the corporation's name and that no property of the pool is commingled with any other person; and (3) is not found by the CFTC to be organized contrary to the public interest. The creation of any legal entity does, of necessity, require the preparation of an organizational document, which delineates the structure of the entity and the rights and obligations associated with holding an ownership interest therein.
2.	Does the regulatory system provide that the legal form and structure of a CIS, as well as the implications thereof for the nature of risks associated with the CIS, be disclosed to investors in such a way that they are not dependent upon the discretion of the CIS operator?
	Yes. CFTC Regulation 4.24(d) requires a CPO to disclose the form of organization of the pool in the Disclosure Document of the pool that is distributed to prospective participants. As a matter of course, the offering of an interest in the pool generally involves the provision of the organizational documents for the pool in conjunction with the Disclosure Document. Further, pursuant to CFTC Regulation 4.24(g), a CPO is required to disclose in the Disclosure Document the principal risk factors relating to participation in the pool, including, but not limited to, risks relating to volatility, leverage, liquidity, and counterparty creditworthiness with respect to the trading structures employed and investment activity expected to be engaged in by the pool.
3.	Is there a regulatory authority responsible for ensuring that the form and structure requirements are observed?
	Yes. When an entity seeks to be registered as a CPO, it must submit a Disclosure Document to NFA, as the CFTC's delegate, for review to determine compliance with the CFTC's regulations as well as NFA's rules prior to holding itself out to be a duly registered CPO and soliciting participants. CFTC staff regularly reviews NFA's review of Disclosure Documents as part of the CFTC's oversight of NFA. NFA also conducts periodic examinations of CPOs, as discussed above.
4.	Does the regulatory system provide that where material changes are made to investor rights that do not require prior approval from investors, notice is given to them before the changes take effect?
	Yes. CFTC Regulation 4.26(a)(1) requires that all information contained in the Disclosure Document must be current as of the date of the document, including information relating to rights of participants. CFTC Regulation 4.26 states that a CPO must provide participants with notice of changes to the information in the Disclosure Document within 21 days of

	the date on which the CPO knows or has reason to know about such changes. Additionally, CFTC Regulation 4.24(w) requires a CPO to disclose all material information to existing or prospective pool participants even if the information is not specifically required by CFTC regulations.
5.	Does the regulatory system provide that where material changes are made to investor rights, notice is given to the relevant regulatory authority?
	Yes. CFTC Regulation 4.26 provides that a CPO must file with NFA any amendments to the Disclosure Document, including those changes made to the rights of commodity pool participants.
6.	Does the regulator have powers aimed at ensuring that any restrictions on type or level of investment or borrowing are being complied with?
	<p>CFTC Regulation 4.24(h)(2) requires a CPO to disclose in the Disclosure Document any material restrictions or limitations on trading required by the pool's organizational documents or otherwise. The Disclosure Document is required to be up to date and materially correct pursuant to CFTC Regulation 4.26. CFTC Regulation 4.24(w) requires a CPO to disclose all material information to existing or prospective pool participants even if the information is not specifically required by CFTC regulations. NFA's rules also generally prohibit loans between a commodity pool and a registered CPO and its affiliates.</p> <p>In the event that a registered CPO fails to comply with its regulatory obligations, NFA's BCC is empowered to take action against the entity and impose sanctions, including expulsion, suspension, fine, censure, or any other fitting penalty, for any violation of its rules. Similarly, the CFTC, through its DOE, may impose civil penalties for violations of CFTC regulations ranging from a ban from registration to a monetary penalty, as well as seek criminal penalties.</p> <p>Furthermore, Part 165 of CFTC regulations provide a whistleblower program which allows for the payment of monetary awards to eligible whistleblowers, and provides anti-retaliation protections for whistleblowers that share information with or assist the CFTC.</p>
	<i>Separation of Assets/Safekeeping</i>
7.	Does the regulatory system require adequate segregation of CIS assets from the assets of the CIS operator and its managers or other entities?
	<p>Yes. CFTC Regulation 4.20(b) states that all funds, securities and property received by a CPO must be received in the name of the commodity pool. CFTC Regulation 4.20(c) states that no CPO may commingle the property of any commodity pool with the property of any other person. NFA's rules also generally prohibit loans between a commodity pool and a registered CPO and its affiliates.</p> <p>CFTC Regulation 4.24(h)(1)(iii)(A) requires a CPO to disclose in a Disclosure Document the identity of the custodian or other entity (e.g., bank or broker-dealer) which will hold the pool's assets. CFTC Regulation 4.24(h)(4)(i) requires a CPO to disclose in a Disclosure Document the manner in which the pool's assets will be held in segregation.</p>
8.	Does the regulatory system provide for requirements governing the safekeeping of CIS assets such as:
	(a) the obligation to entrust the assets to custodians and/or depositaries that are in appropriate circumstances independent; or

	(b) special legal or regulatory safeguards in cases where the functions of custodian and/or depository are performed by the same legal entity responsible for investment functions (or related entities); or
	(c) adequate protection of client assets from losses or insolvency of the CIS operator and the obligation that, where third party custodians are used, client assets are identified as such to any such custodian and equivalent protection is afforded to the client assets, including when the custodian has entrusted all or some of the assets in its safekeeping to a the third party?
	Yes, to all of the above. CFTC Regulation 4.24(h)(1)(iii)(A) requires a CPO to disclose in a Disclosure Document the identity of the custodian or other entity (i.e., bank or broker-dealer) which will hold the pool's assets. CFTC Regulation 4.24(h)(4)(i) requires a CPO to disclose in a Disclosure Document the manner in which the pool's assets will be held in segregation. CFTC Regulation 4.20(a) generally requires a CPO to operate its pool as an entity cognizable as a legal entity separate from that of the CPO. CFTC Regulation 4.20(b) states that all funds, securities and property received by a CPO must be received in the name of the commodity pool. CFTC Regulation 4.20(c) states that no CPO may commingle the property of any commodity pool with the property of any other person. NFA's rules generally prohibit loans between a commodity pool and a registered CPO and its affiliates.
9.	Does the regulatory system adequately provide for an orderly winding up of CIS business, if needed?
	Yes. CFTC Regulation 4.22(c) requires the filing of a final Annual Report containing financial statements within 90 days of the pool's permanent cessation of trading or the return of funds to participants. If necessary, Section 6c of the CEA provides the CFTC with the ability to obtain court orders to freeze pool and/or CPO assets and have receivers appointed to operate the commodity pool for the benefit of participants.

**Principle 26** Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a CIS for a particular investor and the value of the investor's interest in the CIS.

**Key Questions**

1. Does the regulatory system require that all matters material to the valuation of a CIS are disclosed to investors and potential investors on a timely basis?

Yes. The CFTC regime for oversight of commodity pools and CPOs is disclosure-based. CFTC regulations require that a CPO provide a detailed Disclosure Document to prospective pool participants before accepting their subscriptions for interests in a commodity pool. This Disclosure Document includes: the name, address, phone number, and form of organization of the commodity pool and the CPO; whether the commodity pool is privately offered, continuously offered, traded by multiple advisors, or has a principal-protection feature; the date when the Disclosure Document may be used; and the break-even point per unit of initial investment. The document must also disclose the business background of the operator and advisors of the pool as well as their respective principals; all fees and expenses of the pool; conflicts of interest relating to the operation of the pool; relevant material actions against persons managing, trading, or maintaining accounts for the pool; risks of futures trading and specific risks of the pool; information on the pool's investment program and use of proceeds; and provisions relating to redemption. In addition, performance information must be in a prescribed capsule format, the performance of the offered pool must be presented prior to any other performance disclosures, and any information that is not specifically required to be disclosed generally must appear after required information.

Additionally, the CPO must provide an Account Statement to each participant at least monthly, which contains, among other things, the realized and unrealized gains and losses for the pool, all management and advisory fees and brokerage commissions paid by the pool, and the net asset value of the pool.

The CPO must further provide to each participant an Annual Report, which must contain all of the items of the monthly report, plus additional financial disclosures by way of a Statement of Financial Condition of the pool for both the current and preceding fiscal year.

2. Does the regulatory system require that the information referred to in Question 1 above be disclosed to investors and potential investors in an easy to understand format and language having regard to the type of investor?

Yes. NFA rules require that the Disclosure Document be written using plain English principles, including:

- Avoiding legal jargon;
- Using short sentences and paragraphs;
- Using words that are definite and part of everyday language;
- Using glossaries to define technical terms that cannot be avoided; and

	<ul style="list-style-type: none"> <li>Using table and bullet lists, where appropriate.</li> </ul>
3.	Does the regulatory system require the use of standard formats for disclosure of offering documents and periodic reports to investors?
	Yes. As mentioned in the answer to question 1 above, the CFTC's regulations are prescriptive with respect to the content and timing of the delivery of statements to pool participants. This standardization can also be seen with respect to the mandatory cautionary language that is required to be contained in the Disclosure Documents provided to prospective participants, as well as both the contents and construction of performance data contained therein.
4.	Does the regulatory system include a general disclosure obligation to allow investors, and potential investors, to evaluate the suitability of the CIS for that investor or potential investor?
	Yes. As discussed in the response to Question 1, the CFTC's disclosure-based regime requires that a CPO provide a Disclosure Document to prospective participants in each pool that it offers, and to inform existing participants with respect to material changes regarding the operation of the pool. The Disclosure Document includes information, such as the minimum subscription amount required to participate, the risks of the investments to be undertaken, and the costs associated with the investment, that would allow the investor or potential investor to evaluate the suitability of the investment.
5.	Does the regulatory system specifically require that the offering documents, or other publicly available information, include the following:
	(a) The date of issuance of the offering document?
	(b) Information concerning the legal constitution of the CIS?
	(c) The rights of investors in the CIS?
	(d) Information on the operator and its principals?
	(e) Information on the methodology of asset valuation?
	(f) Procedures for purchase, redemption and pricing of units/shares?
	(g) Relevant, audited financial information concerning the CIS?
	(h) Information on the custodial arrangements (if any)?
	(i) The investment policy(ies) of the CIS?
	(j) Information on the risks involved in achieving the investment objectives?
	(k) The appointment of any external administrator or investment managers or advisers who have a significant and independent role in relation to the CIS (including delegates)?

(l) Fees and charges in relation to the CIS, in a way that enables investors to understand their nature, structure and impact on the CIS' performance?
<p>Yes, to all of the above. In response to questions (a)-(l), the Disclosure Document must include:</p> <ul style="list-style-type: none"> <li>• The date on which the CPO first intends to use the Disclosure Document;</li> <li>• The form of organization of the pool;</li> <li>• Whether or not a participant's liability is limited and restrictions on the transferability of a participant's interest;</li> <li>• Identity, business background, and past performance of the CPO, CTAs, and their principals;</li> <li>• The net asset value included in the pool's past performance and financial reports is required to be calculated in accordance with generally accepted accounting principles (U.S GAAP);</li> <li>• The minimum and maximum subscriptions that may be contributed to the pool, where funds will be held prior to trading, the value at which a participant's interest may be redeemed, conditions or restrictions on redemption, any fees associated with redemption, and liquidity risks relative to the pool's redemption capabilities;</li> <li>• The most recent Account Statement and audited Annual Report for the pool must be attached to the Disclosure Document;</li> <li>• The custodian that will hold the pool's assets;</li> <li>• A description of the trading and investment programs and policies that will be followed by the pool, including an explanation of how the pool's advisors, investee funds, and types of investments are selected;</li> <li>• The general risks of investing in a commodity pool, including the financial risks presented by futures contracts, options on futures contracts, and swaps, and the fact that the commodity pool may be subject to substantial charges for management, advisory, and brokerage fees which will require the pool to make substantial trading profit in order to cover the fees; also, the particular risks of the pool, including risks related to volatility, leverage, liquidity, and counterparty creditworthiness, as applicable to the types of trading and investing strategies expected to be employed;</li> <li>• Information on external administrators or any other person providing services to the pool, such as disclosure of fees paid by the pool or potential conflicts of interest relating to such arrangements; and</li> <li>• A complete description of each fee and expense incurred or expected to be incurred by the pool, and the "break-even" point where profits exceed fees and</li> </ul>



	expenses.
6.	Does the regulatory authority have the power to hold back, or intervene, with regard to offering documents? For example, are there regulatory actions available in the event that the information is inaccurate, misleading or false, or does not satisfy the filing/approval requirements?
	Yes. Pursuant to authority delegated from the CFTC, NFA is responsible for reviewing all Disclosure Documents. Prior to using a Disclosure Document, a CPO must submit the Disclosure Document to NFA and receive an acceptance letter confirming that the Disclosure Document can be used to solicit. If the Disclosure Document does not meet regulatory requirements, NFA will provide notice of deficiencies and state that the Disclosure Document may not be used until all issues are addressed. All Disclosure Documents are filed through the NFA's Electronic Disclosure Document Filing System.
7.	Does the regulatory system cover advertising material outside of the offering documents? In particular, does it prohibit inaccurate, false or misleading advertising? Are there regulatory actions available to the regulator with regard to advertising material outside of the offering document?
	<p>Yes. Pursuant to CFTC Regulation 4.41, no CPO may advertise in a manner which:</p> <ul style="list-style-type: none"> <li>• Employs any device, scheme or artifice to defraud any participant or prospective participant;</li> <li>• Involves any transaction, practice or course of business which operates as a fraud or deceit on any participant or prospective participant; and</li> <li>• Refers to any testimonial unless the advertisement or sales literature providing the testimonial prominently discloses that the testimonial may not be representative of all participants, the testimonial is no guarantee of future performance, and, if applicable, a non-nominal sum was paid for the testimonial.</li> </ul> <p>In addition, CPOs are subject to NFA rules that prohibit any false or misleading communications with the public, and also provide specific guidance regarding the content and use of promotional material.</p>
8.	Does the regulatory system require that the offering documents be kept up to date to take account of any material changes affecting the CIS?
	Yes. CFTC Regulation 4.26 requires that all information contained in a Disclosure Document must be current as of the date of the document, provided, however, that performance information may be current as of a date not more than three months prior to the date of the document. No CPO may use a Disclosure Document dated more than twelve months prior to the date of its use. If a CPO knows or should know that the Disclosure Document is materially inaccurate or incomplete, with limited exceptions, it must correct that defect and distribute the correction within 21 calendar days.
9.	Does the regulatory system require a report to be prepared in respect of a CIS's activities either on an annual, semi-annual or other periodic basis?
	Yes. CFTC regulations require both periodic and Annual Reports. CFTC Regulation 4.22(a) requires each CPO to distribute a periodic report (either monthly for pools with assets greater than \$500,000, otherwise quarterly) within 30 calendar days of the end of each

	reporting period. The periodic report must contain a statement of operations and a statement of changes in net assets. Regulation 4.22(c) requires each CPO to distribute an Annual Report to each participant within 90 calendar days after the end of the pool's fiscal year. The Annual Report, which also must be filed with NFA, must contain certain information, including, but not limited to: the pool's Net Asset Value and Statements of Financial Condition, Operations, and Changes in Net Assets.
10.	Does the regulatory system require the timely distribution of periodic reports?
	Yes. As described in the response to Question 9, CFTC Regulation 4.22(a) requires each CPO to distribute an Account Statement to each pool participant in each pool that it operates within 30 calendar days after the last date of the reporting period.
11.	Does the regulatory system require that the accounts of a CIS be prepared in accordance with high quality, internationally acceptable accounting standards?
	Yes. CFTC Regulation 4.22 requires that the financial statements in the periodic and Annual Reports must be presented and computed in accordance with generally accepted accounting principles consistently applied. In addition, the pool's Annual Report must be certified by an independent public accountant.
12.	Does the regulator have powers to ensure that the stated investment policy or trading strategy, the authorized investments that the CIS is able to undertake or any policy required by regulation, is being followed?
	Yes. All offering materials and Account Statements provided by a CPO to its participants must also be filed with NFA pursuant to CFTC regulations. NFA reviews these documents, and conducts periodic on-site examinations of the CPO as a means of monitoring and assuring compliance with CFTC regulations. Examinations are performed regularly, as well as more frequently in response to potential risks posed to the participants in a pool. Document review by NFA that gives rise to a concern regarding the trading or soundness of the pool may trigger an examination.

<b>Principle 27</b>	<b>Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units/shares in a CIS.</b>
<b>Key Questions</b>	
<i>Asset Valuation</i>	
1.	Are there specific regulatory requirements in respect of the valuation of CIS assets?
	Yes. CFTC Regulations 4.10(b), 4.22, and 4.25 specifically require the use of generally accepted accounting principles in calculating the net asset value of a pool.
2.	Are there regulatory requirements that the NAV of CIS be calculated:
(a)	On a regular basis?
(b)	In accordance with high-quality, accepted accounting standards used on a consistent basis?
	Yes, to all of the above. CFTC Regulation 4.22 requires that valuations are to be reported in the Statement of Changes in Net Assets included in the periodic and Annual Reports of the pool. As noted above, net asset value is required to be computed in accordance with generally accepted accounting principles consistently applied.
3.	Are there specific regulatory requirements in respect of the fair valuation of assets where market prices are not available?
	Yes. Because CFTC regulations require the use of generally accepted accounting principles in calculating pool valuations, CPOs are subject to FAS 157, Fair Value Measurements, issued by FASB. This statement defines fair value for commodity pools, establishes a framework for measuring fair value under generally accepted accounting principles, and expands disclosure about fair value measurements.
4.	Are independent auditors required to check the valuations of CIS assets?
	Yes. Annual financial reports of commodity pools are required to be audited by an independent public accountant.
<i>Pricing and Redemption Issues</i>	
5.	Does the regulatory system:
(a)	Require the basis upon which investors may redeem units/shares to be made clear in the constituent documents and/or the prospectus?
(b)	Provide for specific regulatory requirements in respect of the pricing upon redemption or subscription of units/shares in a CIS?
	Yes. CFTC Regulation 4.24(p) requires a CPO to provide in its Disclosure Document a complete description of any restrictions upon the transferability of a participant's interest in the pool, and a complete description of the frequency, timing, and manner in which a participant may redeem interests in the pool. Specifically, the description regarding redemption must specify how the redemption value of a participant's interest will be calculated, the conditions under which redemption will be made (including time between request for redemption and payment) and any restrictions on redemptions.
6.	Does regulation ensure that the valuations made are fair and reliable?
	Yes. See responses to Principle 27, Questions 1-4.
7.	Does regulation require the price of the CIS be disclosed or published on a regular basis to investors or prospective investors?

	Yes. CFTC Regulation 4.22 requires CPOs to distribute Account Statements to participants on at least a quarterly basis (and monthly if the pool has at least \$500,000 in assets). These reports include all material information relevant to the net asset value per participation of the pool. Similar information must be included in the Disclosure Document provided to any prospective participant.
8.	Are there regulatory requirements, rules of practice, and/or rules addressing pricing errors? Are the relevant regulatory authorities able to enforce these rules?
	Yes. See responses to Principle 25, Question 6, and Principle 27, Questions 2, 4, and 7.
9.	Does the regulatory system address the general or specific circumstances which there may be suspension or deferral of routine valuation and pricing or of regular redemption?
	Yes. See response to Principle 27, Question 5.
10.	Does the regulator have the power to ensure compliance with the rules applicable to asset valuation and pricing?
	<p>Yes. See response to Principle 25, Question 6. Section 4n of the CEA states that each CPO must regularly furnish statements of account to each participant. Such statements must include all the information contained in the relevant CFTC regulations. Violations of the CEA and CFTC regulations subject a person to a wide variety of sanctions, including, but not limited to, suspension or revocation of registration, monetary penalties, and restitution.</p> <p>The CFTC also takes a proactive approach to ensuring compliance by CPOs with respect to pool operations. For example, DSIO has regularly issued a CPO guidance letter to assist CPOs and their public accountants with the preparation and filing of Annual Reports. Each CPO guidance letter highlights regulatory and accounting changes affecting CPOs with respect to financial filing and provides reminders of requirements in response to common deficiencies observed in prior years' Annual Reports. CPO guidance letters are available on the CFTC's Web site at: <a href="http://www.cftc.gov/industryoversight/intermediaries/guidancecporeports.html">http://www.cftc.gov/industryoversight/intermediaries/guidancecporeports.html</a>.</p>
11.	Does the regulatory system require that the regulator:
	(a) Be kept informed of any suspension or deferral of redemption rights?
	(b) Have the authority to address situations where the CIS operator is failing to honour redemptions or is imposing a suspension of redemptions in a manner that is not consistent with the CIS constitutive documents and prospectus, or the contractual relationship between the CIS participants and the CIS operator, or is otherwise deemed to be in violation with national law?
	Yes, to all of the above. CFTC Regulation 4.26 requires a CPO to provide NFA with a copy of any amendments to its Disclosure Document, including notice of any suspension or deferral of redemption rights. The CFTC and NFA have the power to take action where a CPO has violated either CFTC or NFA rules with respect to valuation and redemption.

<b>Principle 28</b>	<b>Regulation should ensure that hedge funds and/or hedge funds managers/advisers are subject to appropriate oversight.</b>
<b>Key Questions</b>	
<i>Registration/authorization of hedge fund managers/advisers and/or, where relevant, the hedge fund</i>	
1.	Does the regulatory system set standards for:
(a)	The registration/authorization and the regulation of those who wish to operate hedge funds (managers/advisers)?
(b)	And/or the registration of the fund?
<p>There is no definition of the term “hedge fund” in either the CEA or CFTC regulations. IOSCO has previously defined the term “hedge fund” to be any investment vehicle exhibiting a combination of some of the following characteristics: (1) borrowing and leverage restrictions are not applicable and the fund may use high levels of leverage; (2) significant performance fees (often in the form of a percentage of profits) are paid to the manager in addition to an annual management fee; (3) investors are typically permitted to redeem their interests periodically; (4) often there is significant investment by the manager of the fund; (5) derivatives are used, often for speculative purposes, and there is an ability to short sell securities; and (6) more diverse risks or complex underlying products are involved. <i>See Hedge Funds Oversight – Final Report, Report of the Technical Committee of IOSCO, June 2009, pp. 4-5.</i> To the extent that a “hedge fund” meets the definition of commodity pool in the CEA and CFTC regulations, and absent an applicable exclusion or exemption, the CPO for that pool is required to be registered with the CFTC. Commodity pools are not themselves registered with the CFTC.</p>	
2.	Does the regulatory system specify the information contemplated by Key Issue 2 that must be provided to the regulator at the time of the registration/authorization?
Yes. <i>See responses to Principle 24, Questions 1 and 2.</i>	
<i>Standards for internal organization and operational conduct</i>	
3.	Does the regulatory system set (in view of the risk posed) standards for internal organization and operational conduct to be observed on an on-going basis by the hedge fund manager/adviser, including appropriate risk management and protection and segregation of client money and assets?
Yes. <i>See responses to Principle 24, Question 2, and Principle 25, Question 7.</i>	

<i>Conflicts of interests and other conduct of business rules</i>	
4.	Does the regulatory system set standards for hedge fund managers/advisers to appropriately manage conflicts of interest, and provide full disclosure and transparency to the regulator and investors (including potential investors) about such conflicts and how they manage them?
	Yes. See response to Principle 24, Question 12.
<i>Disclosure to the regulator and to investors</i>	
5.	Is the regulator able to obtain from hedge fund managers/advisers appropriate information about their operations and about the funds that they manage that allow it to assess the risks that hedge funds pose to systemic stability?
	<p>Yes. CFTC Regulation 4.24 requires CPOs to prepare and file with NFA a Disclosure Document which describes in detail the investment strategy, costs, and risks associated with investment in the operated commodity pool. The CFTC oversees NFA's review of the filed Disclosure Documents through periodic review.</p> <p>CFTC Regulation 4.27 requires all CPO that are registered or required to be registered to file a Form CPO-PQR on a periodic basis depending upon their assets under management with detailed information regarding the investments held by their operated commodity pools, their relationships with service providers, and stress testing. Specifically, all CPOs with assets under management in the amount of \$500 million or greater are required to provide the CFTC with the following information: pool borrowings, counterparty credit exposure, fund strategy, derivatives exposure, and a full schedule of investments. Further, all CPOs with assets under management greater than \$1.5 billion must also provide the following information to the CFTC: their operated pools' geographical exposure, liquidity, and risk testing based upon several specific scenarios.</p>
6.	Does the regulatory system, in view of the risk posed, set standards for the proper disclosure by hedge fund managers/advisers or the fund to investors?
	Yes. See responses to Principle 25, Questions 2, 6, and 8; Principle 26, Questions 4 and 5; and Principle 28, Question 5.
<i>Prudential regulation</i>	
7.	Are hedge fund managers/advisers, which are required to register, subject to appropriate ongoing prudential requirements that reflect the risks they pose?
	Under the CEA, the CFTC does not have the authority to act as a <i>prudential</i> regulator of hedge funds.
<i>Supervision and enforcement</i>	
8.	
(a)	Does the regulatory system provide for on-going supervision of the hedge fund managers/advisers which are required to register?
(b)	Does the regulator have the power to access and inspect the hedge fund managers/advisers and their records and/or the hedge funds?
(c)	Does the regulator have the authority to enforce against wrongdoers?
	Yes. See responses to Principle 24, Questions 6, 7, 8, 9, 10, and 11; and Principle 25, Question 6.

9.	Subject to appropriate confidentiality safeguards and national law restrictions, from the point of view of supervision and enforcement, does the regulator have the power to:
(a)	Collect where necessary relevant information from hedge fund managers/advisers and/or hedge funds (and through cooperation with other domestic regulators from hedge fund counterparties) also on behalf of a foreign Regulator?
(b)	Exchange information on a timely and on-going basis, as deemed appropriate, with other relevant regulators on internationally active funds that may pose systemic or other significant risks?
	As discussed in response to Principle 13, Question 3, the CFTC may share information with a Foreign Regulator or Authority acting within the scope of its jurisdiction, provided that the requirements in Section 8(e) of the CEA are satisfied, and may provide investigative assistance to a foreign regulatory authority pursuant to Section 12(f)(1) of the CEA, including collecting and sharing information. <i>See also</i> the discussion in response to Principle 15, Question 1. As discussed in response to Principle 14, Questions 2 and 4, above, the CFTC has entered into many Cooperative Arrangements to facilitate cooperation and the exchange of information with Foreign Regulators and Authorities. In particular, the CFTC recently entered into MOUs with 29 European authorities related to supervision of CIS and the alternative investment fund industry.
10.	Is the securities' regulator able to obtain from the hedge fund operator/adviser - if necessary working with other regulators - non-public reporting of information on the hedge funds' exposure to counterparties, (which may include prime brokers, banks or OTC derivative counterparties)?
	Yes. CFTC Regulation 4.27 requires all CPOs that are registered or required to be registered to file a Form CPO-PQR on a periodic basis depending upon the assets under management by the CPO. This form includes information regarding the CPO's brokers, counterparties, custodians, and other service providers. CPOs that are also registered with the SEC as investment advisers to private funds provide substantively identical information on Form PF, which is filed with FINRA and made available to the CFTC.

**PRINCIPLES RELATING TO MARKET INTERMEDIARIES (29-32)**

**Principle 29 Regulation should provide for minimum entry standards for market intermediaries.**

**Key Questions**

*Authorization*

1. Does the jurisdiction require that, as a condition of operating a securities business, the market intermediaries (as defined above) are licensed?

Yes. Section 8a of the CEA requires individuals and firms that intend to do business in the markets regulated by the Commission ("intermediaries"), with certain exceptions, to be "licensed" with the CFTC, which is implemented through registration requirements. The primary purposes of registration are to screen an applicant's fitness to engage in business as an intermediary and to identify those individuals and organizations whose activities are subject to federal regulation. In addition, all individuals and firms that wish to act as market intermediaries must apply for NFA membership or associate status.

The CFTC divides market intermediaries into distinct categories according to the types of commodity transaction intermediated and the intermediary's function, and each of these categories is generally subject to registration requirements as a condition to operating as an intermediary. Registration is performed for the CFTC by NFA pursuant to authority delegated by the CFTC to NFA. Registration categories include SDs, MSPs, FCMs, CPOs, CTAs, IBs, and RFEDs. Individuals performing certain functions and principals of the foregoing must also be individually registered or listed. There are exemptions from registration for certain categories and registration for one category is not transferable to another.

With respect to swap transactions, Sections 4s(a) and 4s(b) of the CEA prohibit any person from acting as an SD or MSP unless such person is registered with the CFTC, and prohibits an SD or MSP from permitting any person associated with it to effect or be involved in effecting swaps on its behalf if such person is subject to a statutory disqualification. CFTC regulations provide a limited exception to this prohibition for any person associated with an SD or MSP who has been duly listed as a principal<sup>122</sup> or registered as an AP<sup>123</sup> of another registrant (e.g., an FCM, CPO or CTA).

Section 4s of the CEA requires SDs and MSPs to meet specific requirements with regard to, among other things, capital and margin, reporting and recordkeeping, daily trading records, business conduct standards, documentation standards, trading duties,

<sup>122</sup> A "principal" is defined by CFTC Regulation 3.1(a) as a sole proprietor, general partner, director, officer, manager or managing member, or person who is in charge of a principal business unit, division or function subject to CFTC regulation, or any person occupying a similar position who exercises a controlling influence over the regulated activities of the firm. In addition, any holder or beneficial owner of 10 percent or more of the outstanding shares of stock in the firm, or any person who has contributed 10 percent or more of the firm's capital, is a principal.

<sup>123</sup> An AP is an individual who solicits orders, customers, or customer funds (or who supervises persons so engaged) on behalf of an FCM, RFED, IB, CTA, or CPO.



designation of a chief compliance officer, and with respect to uncleared swaps, segregation of customer funds (the "Section 4s Requirements").<sup>124</sup>

Persons who apply for registration as an SD or MSP must file a Form 7-R, and a Form 8-R and a fingerprint card for each principal of the applicant who is a natural person, accompanied by such documentation as may be required to demonstrate compliance with applicable Section 4s requirements and CFTC requirements. For an FCM, RFED, IB, CPO, or CTA, registration also requires the submission of a Form 7-R, which requires:

- Disclosure of business information, including information concerning any holding company and/or branch offices;
- Disclosure of criminal or regulatory actions, as well as financial information; and
- Nomination of contact persons for membership, accounting arbitration, compliance and enforcement issues.

Additionally, FCMs, RFEDs and IBs may be required to submit for approval their procedures and/or materials concerning some or all of the following: (a) anti-money laundering; (b) business continuity; (c) electronic order routing systems (for FCMs) or automated order routing systems (for IBs); (d) promotional materials; (e) supervision of APs; (f) handling of customer complaints; and (g) margins and/or segregation procedures (for FCMs). FCMs, RFEDs and IBs may also be required to provide copies of their Source of Assets letters and any subordinated loan agreements.

Principals or APs of an FCM, RFED, IB, CPO or CTA, and floor traders and floor brokers, must submit a Form 8-R, which requires:

- Criminal, civil, regulatory, financial, professional, educational and residential background disclosures;
- Evidence of the satisfaction of proficiency examination requirements; and
- Completion of a fingerprint card (to be used by the FBI in conducting a background check on the applicant).

As is discussed in further detail below, in addition to the CFTC's registration requirement, certain categories of market intermediaries are subject to minimum capital requirements as a condition to operating as a market intermediary.

2. Are there minimum standards or criteria that all applicants for licensing must meet before a licence is granted (or denied) and that are clear and publicly available which:

(a) Are fair and equitable for similarly situated intermediaries?

Yes. The CFTC's and NFA's registration requirements are applied fairly and equitably to all similarly situated intermediaries.

<sup>124</sup> Segregation of customer funds for cleared swaps is governed by CEA Section 4d(f)(2).

<p>As explained in the answer to Question 1 of this Principle, the CFTC and NFA both impose minimum standards and criteria that all applicants for registration must meet as a condition to becoming registered as an intermediary. The minimum standards concerning registration of intermediaries are published on the CFTC and NFA websites. The CFTC's rules concerning registration are set forth in Parts 3 and 23 of its regulations. NFA's requirements and procedures for registration are set forth in Part 200 of its Manual/Rules.</p>
<p>(b) Are consistently applied?</p>
<p>Yes. The CFTC's and NFA's minimum standards and criteria for registration of market intermediaries are consistently applied. As explained in the answer to Question 1 of this Principle, all similarly situated entities of the same category of registrant (i.e., all similarly situated FCMs, all similarly situated IBs, etc.) are subject to identical registration requirements.</p>
<p>(c) Include an initial capital requirement, as applicable?</p>
<p>Yes. CEA Section 4s(e) requires the adoption of rules establishing capital and margin requirements for SDs and MSPs, and applies a bifurcated approach that requires each SD and MSP for which there is a prudential regulator<sup>125</sup> to meet the capital and margin requirements established by the applicable prudential regulator, and each SD and MSP for which there is no prudential regulator to comply with the CFTC's capital and margin regulations. The CFTC published proposed margin and capital requirements for SDs and MSPs in 2011,<sup>126</sup> and recently voted out a revised margin proposal in close coordination with the SEC and prudential regulators in light of the Basel Committee on Banking Supervision-International Organization of Securities Commissions September 2013 "Margin Requirements for Non-Centrally Cleared Derivatives."</p> <p>CFTC Regulation 1.17 prescribes the minimum levels of adjusted net capital that FCM and IBs must possess. CFTC Regulation 5.7 prescribes the minimum level of adjusted net capital for RFEDs.</p>
<p>(d) Include a comprehensive assessment of the applicant and all those in a position to control or materially influence the applicant that addresses a demonstration of appropriate knowledge, business conduct, resources, skills, ethical attitude (including a consideration of past conduct)?</p>
<p>Yes. As explained in the response to Question 1 of this Principle, NFA's registration process does include an examination of an applicant's past conduct and satisfaction of proficiency requirements. NFA requires the submission of a Form 8-R by any individual</p>

<sup>125</sup> The term "prudential regulator" is defined in Section 1a(39) of the CEA to include the Federal Reserve; the OCC; the FDIC; the Farm Credit Administration; and the FHFA. The definition also specifies the entities for which these agencies act as prudential regulators, and these consist generally of federally insured deposit institutions; farm credit banks; federal home loan banks; the Federal Home Loan Mortgage Corporation; and the Federal National Mortgage Association. In the case of the Federal Reserve, it is the prudential regulator not only for certain banks, but also for bank holding companies and any foreign banks treated as bank holding companies. The Federal Reserve Board also is the prudential regulator for subsidiaries of these bank holding companies and foreign banks, but excluding their nonbank subsidiaries that are required to be registered with the CFTC as SDs or MSPs.

<sup>126</sup> See *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, 76 FR 23732 (Apr. 28, 2011); *Capital Requirements for Swap Dealers and Major Swap Participants*, 76 FR 27802 (May 12, 2011).

	<p>serving as a principal or an AP of the applicant. It is through this requirement that the CFTC and NFA can consider the knowledge, resources, business conduct, skills and ethical attitude of senior management, directors and substantial owners/shareholders.</p> <p>As previously discussed, Form 8-R examines an individual's background as concerns any criminal, civil or regulatory issues, any financial issues, professional work experience, and education. Additionally, Form 8-R requires evidence of the satisfaction of any necessary proficiency examination requirements. The individual applicant also is required to complete a fingerprint card, which is used by the FBI in conducting a background check on the applicant.</p> <p>It should be noted that the CFTC uses the information gained during the registration process as part of an objective approach to assessing ethical compliance, based, in part, on past conduct that could indicate a potential lack of appropriate ethical standards. No subjective inquiry is performed.</p>
	<p>(e) Include an assessment of the sufficiency of internal organization and risk management and supervisory systems in place, including relevant written policies and procedures, which also enable ongoing monitoring as to whether the minimum standards are still met?</p>
	<p>Yes. As described in response to Question 1 of this Principle, SDs and MSPs submit documentation to NFA demonstrating compliance with the Section 4s Requirements and CFTC regulations. As a part of the review process, NFA may request additional information or supporting materials from an SD or MSP.</p> <p>With respect to ongoing monitoring, the CFTC reserves the right to conduct on-site examinations of the operations and activities of SDs and MSPs. Further, market intermediaries are required to report to NFA, deficiencies, inaccuracies, and changes in the forms previously filed with NFA.</p> <p>As explained in the response to Question 1 of this Principle, FCMs, RFEDs and IBs may be required to submit for approval their procedures and/or materials concerning: (a) anti-money laundering; (b) business continuity; (c) electronic order routing systems (for FCMs) or automated order routing systems (for IBs); (d) promotional materials; (e) supervision of APs; (f) handling of customer complaints; and (g) margins and/or segregation procedures (for FCMs). FCMs and IBs may also be required to provide copies of their Source of Assets letters and any subordinated loan agreements. However, NFA is not required to conduct a specific assessment of the sufficiency of an applicant's internal controls and risk management prior to granting an FCM or IB registration. Nonetheless, it should be noted that certified financial statements are required for such entities prior to registration and, should material inadequacies in the accounting system, internal accounting control, or in the procedures for safeguarding customer funds or firm assets, exist, the certified accountant must notify the applicant/registrant, who must notify NFA, the DSRO, and the CFTC.</p>
3.	<p>Does the regulator or the SRO subject to the regulator's oversight have in place processes and resources to effectively carry out a review of applications for licence?</p>
	<p>Yes. If an SD or MSP files a Form 7-R, Form 8-R and fingerprint card, application fee and</p>

documentation required to demonstrate compliance with the Section 4s Requirements, then NFA will notify the SD or MSP that it is provisionally registered. Subsequent to providing notice of provisional registration to an applicant for registration as an SD or MSP, NFA must also determine whether the documentation submitted by the applicant demonstrates compliance with the applicable CFTC regulations. On and after the date on which NFA confirms that the applicant for registration as an SD or MSP has demonstrated its initial compliance with the Section 4s Requirements and all other applicable registration requirements under the CEA and CFTC regulations, the provisional registration of the applicant shall cease and it shall be registered as an SD or MSP, as the case may be.

FCM and RFED applicants must submit the online Form 7-R, and file financial information, copies of their policies and procedures, and certain other documents.<sup>127</sup> The financial statements can be either a certified financial statement as of a date no more than 45 days before it is filed or a certified financial statement as of a date no more than one year before it is filed and an uncertified financial statement as of a date no more than 17 business days before it is filed.

IB applicants must provide the information requested on NFA's Online Registration System. An independent IB applicant must file financial information and copies of its policies and procedures. A guaranteed IB must file a guarantee agreement and copies of its policies and procedures. The financial filing requirement can be fulfilled by filing a financial statement certified by an independent public accountant as of a date not more than 45 days prior to the date on which such report is filed; a financial statement as of a date not more than 17 business days prior to the date on which such report is filed and a financial statement certified by an independent public accountant as of a date not more than one year prior to the date on which such report is filed; or a financial statement as of a date not more than 17 business days prior to the date on which such report is filed.

NFA will grant a temporary license to a guaranteed IB after all filings have been made for the IB and NFA has determined that the IB and each of its individual principals meet the eligibility requirements for obtaining a temporary license. The FCM or RFED that guarantees the IB must also file its certification before the temporary license can be issued.

All applicants for registration as an FCM, RFED or independent IB must submit a letter written on the applicant's business stationery describing the source of its current assets and representing that its capital has been contributed for the purpose of operating the business for which it is applying for registration and that it will continue to be used for that purpose. The letter must be signed by a principal of the firm.

With respect to the CFTC's resources, the total number of registrants and registered

<sup>127</sup> A list of the additional documents that may be required are available at: <http://www.nfa.futures.org/NFA-compliance/NFA-futures-commission-merchants/fcm-applicants.HTML>.

entities that are subject to the CFTC's jurisdiction, depending on the measure, has increased by at least 40 percent in the last four years. This includes 102 SDs and two MSPs as of June 16, 2014.<sup>128</sup> In addition, there are more than 4,000 advisers and operators of managed funds, some of which have significant outward exposures in and across multiple markets.

Additionally, there are another approximately 64,000 registrants, mostly APs that solicit or accept customer orders or participate in certain managed funds, or that invest customer funds through discretionary accounts. The CFTC provides guidance and interpretations to the SROs which oversee these registrants.

The Commission today performs only high-level, limited-scope reviews of the approximately 85 FCMs holding over \$230 billion in customer funds. In fact, the Commission has a staff of only 35 examiners to review these firms and analyze, among other things, over 1,200 financial filings each year. This staff level is less than the number the Commission had in 2010, yet the number of firms has almost doubled. Additionally, the Commission currently has only 14 FTEs engaged in review of SDs and MSPs.

In FY2014, the Commission overall will have approximately 100 staff positions dedicated to examinations of the thousands of different registrants subject to its jurisdiction.

For FY2013, the CFTC operated under an operating budget of \$195 million. For FY2014, the CFTC appropriation was \$215 million. As directed by Congress, the agency has submitted a FY2014 Spend Plan outlining its allocation of current resources, which reflects an increased emphasis on examinations and technology-related staff.

With respect to the NFA's resources, there too, costs associated with a substantial expansion of regulatory duties resulted in a 27 percent increase in NFA's operating budget for FY2013, which began July 1. NFA projects operating expenses in FY2013 will be \$60.8 million. NFA's Board of Directors approved the proposed budget at its meeting on May 17, 2014 in New York. With these increased regulatory responsibilities comes the need for additional staffing. NFA anticipates its staffing level will increase by about 60 employees in FY 2013. To accommodate the new staff, NFA is expanding its office in Chicago and has relocated its New York offices to a larger space. NFA continues to operate on the premise that each regulatory program (futures, swaps, forex, market regulation) should be financially self-sufficient, and that each program should generate enough revenue to recover the costs associated with operating the program. See <https://www.nfa.futures.org/news/member-newsletter-2012/newsletterSummer2012.HTML>

<sup>128</sup> Provisionally registered SDs are listed at: <http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer>

<i>Authority of Regulator</i>	
4.	Does the relevant authority have the power to:
(a)	Refuse licensing, subject only to administrative or judicial review, if authorization requirements have not been met?
<p>Yes. With respect to SDs and MSPs, CFTC Regulation 3.10(a)(1)(v)(D)(1) provides that where an applicant for registration fails to demonstrate compliance with the Section 4s Requirements, NFA will notify the applicant that its application is deficient, whereupon the applicant must withdraw its application, must not engage in any new activity as a SD or MSP, and shall cease to be provisionally registered. In the event the applicant fails to withdraw its application or cure the deficiency within 90 days following receipt of notice from NFA that the applicant's application is deficient, the applicant will be deemed withdrawn and thereupon its provisional registration shall cease. Upon written request, the CFTC may, in its discretion, extend the time by which the applicant must cure the deficiency.</p> <p>With respect to FCMs, IBs, FBs, FTs, CTAs, CPOs, and APs, CEA Section 8a(2), 8a(3) and 8a(4) provide the CFTC with authority to statutorily disqualify the person's or entity's registration in certain enumerated situations. Pursuant to this authority, the CFTC has enacted Regulations 3.60 through 3.64, which establish the procedures by which the CFTC may deny, condition, suspend, revoke or place restrictions upon registration.</p>	
(b)	Withdraw, suspend or apply a condition to a licence where a change in control or other change results in a failure to meet relevant requirements on an ongoing basis?
<p>Yes. NFA rule 501 allows NFA to suspend or revoke the registration of any registrant based on the standards of fitness set forth in the CEA. CFTC Regulation 3.31(a)(3) requires a registrant to file a Form 8-R on behalf of each new natural person principal who was not listed on the registrant's Form 7-R promptly after the change occurs. (NFA Rule 208 prescribes a 20-day period after the inclusion of a new natural principal in which the Form 8-R must be filed.)</p> <p>CFTC Regulation 1.17 provides that, should an FCM not be in compliance with its net capital requirements, it must transfer all customer accounts and immediately cease doing business as an FCM, subject to a 10-business day period during which the CFTC may have discretion to permit it to continue operating pursuant to a demonstration that it will be able to achieve compliance. CFTC Regulation 5.7 has a similar provision for RFEDs.</p>	
(c)	Take effective steps to prevent the employment of persons (or seek the removal of persons) who have committed securities violations or who are otherwise unsuitable, so that they cannot continue to engage in intermediary activities, even if these persons are not separately licensed intermediaries if they can have a material influence on the firm?
<p>Yes. CEA Section 4s(b)(6) states that except to the extent otherwise specifically provided by rule, regulation or order, it shall be unlawful for an SD or MSP to permit any person associated with an SD or MSP who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the SD or MSP, if the SD or MSP knows or in the</p>	

<p>exercise of reasonable care should have known, of the statutory disqualification.</p> <p>CFTC Regulation 23.22 provides that SDs and MSPs cannot permit a person who is subject to a statutory disqualification under CEA Sections 8a(2) or 8a(3) to effect or be involved in effecting swaps on behalf of the SD or MSP, if the SD or MSP knows, or in the exercise of reasonable care should know, of the statutory disqualification.</p> <p>Section 8a(4) of the CEA permits the CFTC to suspend, revoke or place restrictions upon the registration of any person registered under the CEA based on certain criteria set forth in Section 8a(3). These include, but are not limited to, violations of the CEA or rules thereunder, any wilful material misstatement or omission on an application, as well as for "other good cause." Section 8a(2) empowers the CFTC to refuse to register any person whose prior registration is under suspension or has been revoked.</p> <p>Additionally, CFTC Regulation 3.51 provides that, when information comes to the attention of the CFTC that an applicant for initial registration in any capacity under the CEA is subject to statutory disqualification, the CFTC may take steps to have the application withdrawn on a voluntary basis, or through the institution of legal proceedings.</p>	
<i>Ongoing Requirements</i>	
5.	Are market intermediaries required to update periodically relevant information with respect to their licence and to report immediately to the regulator (or licensing authority) material changes in the circumstances affecting the conditions of the licence?
	Yes. Pursuant to CFTC Regulation 3.31, each registrant or applicant for registration must promptly correct any deficiency or inaccuracy in its registration information including information about its principals and APs.



6.	Is the following relevant information about licensed intermediaries available to the public:
(a)	The existence of a licence, its category and status?
(b)	The scope of permitted activities and the identity of senior management and names of other authorized individuals who act in the name of the intermediary?
	Yes, to both of the above. NFA's Background Affiliation Status Information Center (BASIC), which can be accessed from NFA's website ( <a href="https://www.nfa.futures.org/BasicNet/">https://www.nfa.futures.org/BasicNet/</a> ), includes information on each registrant, the category of license held by the firm or individual, the main office, its listed principals, and membership/registration history. Disciplinary actions against the firm or individual are also included.
<i>Investment Advisers</i>	
7.	Does the regulatory scheme for investment advisers require that, as applicable:
(a)	If an investment adviser deals on behalf of clients, the capital and other operational controls (explained in Principles 29 to 32) applicable to other market intermediaries also should apply to the adviser?
	Not Applicable to the CFTC.  A CTA is any person who, for compensation or profit, is engaged in the business of providing commodity interest advisory services to others. CTAs are not permitted to deal on behalf of customers under this license. If a CTA engages in other activities requiring separate registration, then it must comply with the applicable requirements.
(b)	If the adviser does not deal, but is permitted to have custody of client assets, regulation provides for the protection of client assets, including segregation and periodic or risk-based inspections (either by the regulator or an independent third party) and capital and organizational requirements as explained under Principles 29 to 32?
	Not Applicable to the CFTC.  CTAs are not permitted to have custody of client assets. There is a limited exclusion from the definition of a CTA for FCMs, with respect to advising which occurs and is solely incidental to its other business as an FCM, in such case, all the FCM requirements regarding protection of client assets, including, segregation and periodic risk-based inspections, capital, and organizational requirements would fully apply.
(c)	In the case of both (a) and (b), as well as advisers who manage client portfolios without dealing on behalf of clients or holding client assets, does regulation impose relevant requirements that cover record keeping, disclosure and conflicts of interest as explained in Principle 31?
	Yes. CFTC Regulation 4.33 requires CTAs to keep accurate, current and orderly books and records concerning the clients and subscribers of the CTA and of the activities of the CTA itself.  Yes. CFTC Regulations 4.34 and 4.35 require that a CTA disclose specific information, including the business background of the CTA and its principals that will make trading or operational decisions, any material actions against the CTA and principals, a description of the trading program and related risk factors, fees, any actual or potential conflicts of



interest, and past performance of its client accounts.

Yes. CFTC Regulation 4.35(a)(9) requires the prominent disclosure of the following statement with past performance information presented in CTA Disclosure Documents: "PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS."

CFTC Regulation 4.34(j) requires a CTA to provide a full description of any actual or potential conflicts of interest regarding any aspect of the CTA's trading program on the part of:

- The CTA;
- Any FCM with which the client will be required to maintain its commodity interest account;
- Any IB through which the client will be required to introduce its account to an FCM; and
- Any principal of the foregoing.

The CTA also must disclose any other material conflict involving any aspect of the offered trading program, including any arrangement whereby the CTA or principal thereof may benefit, directly or indirectly, from the maintenance of the client's commodity interest account with an FCM or IB (such as payment for order flow or soft dollar arrangements).

Section 4o of the CEA and CFTC Regulation 4.41 prohibit, among other things, a CTA from employing any device, scheme or artifice to defraud any client.

FCMs are required to maintain books and records (CFTC Regulation 1.31) and offer very specific disclosures to customers (CFTC Regulation 1.55), and must have in place policies and procedures to ensure advertising and solicitations are not misleading (CFTC Regulation 1.55(l)). See Principle 8 for a discussion of conflict of interest provisions applicable to SDs, MSPs, FCMs and IBs.

**Principle 30**    **There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.**

**Key Questions**

1. Are there initial and ongoing minimum capital requirements for market intermediaries? Are there also liquidity standards? Do the capital and liquidity standards address solvency?

Yes. As discussed in response to Principle 29, Question 2(c), CEA Section 4s(e) requires the adoption of rules establishing capital and margin requirements for SDs and MSPs, and applies a bifurcated approach that requires each SD and MSP for which there is a prudential regulator to meet the capital and margin requirements established by the applicable prudential regulator, and each SD and MSP for which there is no prudential regulator to comply with the CFTC's capital and margin regulations. The CFTC published proposed margin and capital requirements for SDs and MSPs on May 12, 2011 and is drafting revised capital and margin proposals in close coordination with the SEC and prudential regulators.

The proposed rules address the SD's or MSP's qualifying capital and the minimum levels of such qualifying capital that the SD or MSP would be required to maintain. The proposed requirements also include amendments to existing CFTC regulations governing FCM capital requirements, in addition to new capital rules that would apply to SDs and MSPs that are not FCMs. The proposed rules also address when internal models may be used for purposes of the required capital calculations.

SDs and MSPs that are also FCMs are required to meet existing FCM requirements to hold minimum levels of adjusted net capital, with a higher minimum fixed dollar net capital requirement of \$20 million. SDs and MSPs that are not FCMs and are nonbank subsidiaries of U.S. bank holding companies would be required to meet a minimum capital requirement of \$20 million Tier 1 capital as defined in bank regulations, the minimum risk-based ratio requirement that would apply as if the SD itself were a bank holding company, or any higher amount required by a registered futures association of which such SD or MSP is a member.

SDs and MSPs that are neither FCMs nor a bank holding company subsidiary would be required to maintain tangible net equity equal to \$20 million, plus additional amounts for market risk and OTC derivatives credit risk.

The proposed capital requirements for SDs and MSPs do not have the same liquid assets requirements as the FCM capital requirements, as entities which may be SDs and MSPs could have operating businesses, which would make liquidity requirements impracticable. However, SDs and MSPs are not permitted to clear swaps for customers. Under the CEA, customer clearing for swaps must be performed through FCMs, which are subject to liquid assets capital requirements.

FCM capital requirements are designed to require a minimum level of liquid assets in excess of the FCM's liabilities to provide resources for the FCM to meet its financial obligations as a market intermediary. The capital requirements also are intended to

ensure that an FCM maintains sufficient liquid assets to wind-down its operations by transferring customer accounts in the event that the FCM decides, or is forced, to cease operations as an FCM.

CFTC Proposed Regulation 1.17(a) addresses the first component of the FCM capital rule by specifying the minimum amount of adjusted net capital that a registered FCM is required to maintain. Specifically, CFTC proposed regulation 1.17 sets the minimum adjusted net capital requirement as the greatest of: (1) \$1,000,000; (2) for an FCM that engages in off-exchange foreign currency transactions with retail participants, \$20,000,000, plus 5 percent of the FCM's liabilities to the retail forex participants that exceeds \$10,000,000; (3) 8 percent of the risk margin (as defined in CFTC Regulation 1.17(b)(8)) of customer and non-customer exchange-traded futures positions and OTC swap positions that are cleared by a clearing organization and carried by the FCM; (4) the amount of adjusted net capital required by a registered futures association of which the FCM is a member; and (5) for an FCM that also is registered as securities broker or dealer, the amount of net capital required by rules of the SEC. The requirements for the calculation of the FCM's adjusted net capital represent the second component of the FCM capital rule. CFTC proposed Regulation 1.17(c)(5) generally defines the term "adjusted net capital" as an FCM's "current assets," i.e., generally liquid assets, less all of its liabilities (except certain qualifying subordinated debt), and further reduced by certain capital charges (or haircuts) to reflect potential market and credit risk of the firm's current assets.

FCMs and IBs are subject to minimum capital requirements. Customer protection and the financial stability of the marketplace are central objectives of the CEA, and their achievement can be facilitated by ensuring an adequate minimum capital requirement for FCMs and IBs.<sup>129</sup> With respect to FCM capital requirements, the CFTC has stated in various rule revisions concerning its net capital regulation that its goal is to enhance the protection of customers' segregated funds and to ensure that the capital of FCMs appropriately takes into account risks undertaken by the firm, and those two results are of the greatest importance to the security and overall well-being of market participants and the markets themselves.

Section 4f(b) of the CEA provides that FCMs and IBs must meet the minimum financial requirements that the CFTC "may by regulation prescribe as necessary to insure" that FCMs and IBs meets their obligations as registrants. The minimum capital requirements for FCMs and IBs are set forth in CFTC Regulation 1.17. This regulation requires each FCM and IB to maintain at all times adjusted net capital (as defined below) in an amount that meets or exceeds the greatest of several capital computations required under the regulation. Regulation 1.17 also provides an alternative means for IBs to satisfy net capital requirements, by operating pursuant to a guarantee agreement that meets the requirements set forth in Regulation 1.10(j). Such guaranteed IBs must place their trades

<sup>129</sup> 45 FR 79416 (Dec. 1, 1980).

only with the FCM guaranteeing the IB.

It also should be noted that FCMs generally have treated “early warning” notice requirements under CFTC Regulation 1.12(b) as establishing a *de facto* higher capital requirement for FCMs. Specifically, Regulation 1.12(b) requires FCMs to provide immediate notification to the CFTC and their DSROs if the FCM’s capital falls below the following levels:

- 110 percent of the risk-based capital requirement;
- 150 percent of the minimum dollar requirement, or of the requirement for minimum capital under NFA rules; or
- If the FCM is a securities broker-dealer, the early warning level established under SEC rules.

In order to avoid triggering the notice requirement under Regulation 1.12(b), FCMs generally seek to maintain capital at levels above the early warning levels described above.

FCMs are registered entities which may intermediate customer business to clearing, and hold customer funds related thereto. Thus, they have net capital requirements designed to ensure current assets comprise adequate capital, with charges, or haircuts, designed to capture market risks of holding certain types of assets or proprietary trading, and the discounting of non-current assets as well as undermargined capital charges designed to address credit risk. In addition, CFTC Regulation 1.17(a)(4) provides that the CFTC may demand certification from an FCM, with verifiable evidence, of sufficient access to liquidity to continue operating as a going concern. If certification is not made immediately upon such request, or verifiable evidence is not provided, the FCM must transfer all customer accounts and cease doing business as an FCM until such time as the firm is able to demonstrate compliance. The CFTC may in its discretion permit the FCM up to a maximum of 10 business days grace period to achieve compliance if the FCM immediately demonstrates to the satisfaction of the Commission the ability to achieve compliance.

The minimum capital requirements for IBs are lower than for FCMs, as the CEA does not permit IBs to receive or hold customer funds. The capital requirements for IBs that are not guaranteed are the greatest of the following:

1. \$45,000;
2. The minimum amount required by the NFA; and
3. For IBs also registered as securities brokers or dealers, the amount of capital required by the SEC.

2. Are the capital adequacy requirements structured to result in capital addressed to the full range of risks to which market intermediaries are subject, e.g., market, credit, liquidity and operational risks?

The CFTC's proposed capital regulations for SDs and MSPs are structured to result in capital addressed specifically to market and credit risk. The CFTC's capital treatment for liquidity risks is limited to the FCM registration category that is solely permitted to intermediate the clearing of futures and swaps transactions and holding of customer funds related thereto. The CFTC's early warning and notices provisions create likely additional capital buffers which may mitigate operational risks. The CFTC has recently imposed new risk management requirements which may further mitigate operational risk outside of capital adequacy. The CFTC's proposed regulations for SDs and MSPs set forth capital calculations for OTC derivatives credit risk that are based on Basel requirements that do not incorporate internal models. The proposed rule required credit risk deduction also includes a concentration charge specified in SEC Rule 15c3-1e. The charge as proposed would equal the sum of (1) a counterparty exposure charge (summarized below) and (2) a counterparty concentration charge, which would equal 50 percent of the amount of the current exposure to any counterparty in excess of 5 percent of the SD's or MSP's applicable minimum capital requirement, plus a portfolio concentration charge of 100 percent of the amount of the SD's or MSP's aggregate current exposure for all counterparties in excess of 50 percent of the SD's or MSP's applicable minimum capital requirement.

The counterparty exposure charge would equal the sum of the net replacement values in the accounts of insolvent or bankrupt counterparties plus the "credit equivalent amount" of the SD's or MSP's exposure to its other counterparties. The SD or MSP would be permitted to offset the net replacement value and the credit equivalent amount by the value of collateral submitted by the counterparty, as specified and subject to certain haircuts in the proposed rule. The resultant calculation would be multiplied by a credit risk factor of 8 percent.

For purposes of this computation, the credit equivalent amount would equal the sum of the SD's or MSP's current exposure and potential future exposure to each of its counterparties that is not insolvent or bankrupt. The current exposure for multiple OTC positions would equal the greater of (i) the net sum of all positive and negative mark-to-market values of the individual OTC positions, subject to permitted netting pursuant to a qualifying master netting agreement; or (ii) zero.<sup>130</sup> The potential future exposure for multiple OTC positions that are subject to a qualifying master netting agreement is calculated in accordance with the following formula:  $Anet = (0.4 \times Agross) + (0.6 \times NGR \times$

<sup>130</sup> For a single OTC position, the current exposure is the greater of the mark-to-market value of the OTC position or zero.

Agross), where: (i) Agross equals the sum of the potential future exposure for each individual OTC position<sup>131</sup> subject to the swap trading relationship documentation that permits netting;<sup>132</sup> and (ii) NGR equals the ratio of the net current credit exposure to the gross current credit exposure. In calculating the NGR, the gross current credit exposure equals the sum of the positive current credit exposures of all individual OTC derivative contracts subject to any netting provisions of the swap trading relationship documentation, which must be legally enforceable in each relevant jurisdiction, including in insolvency proceedings. The proposed rule also requires that the gross receivables and gross payables subject to the netting agreement can be determined at any time; and that the SD or MSP, for internal risk management purposes, monitors and controls its exposure to the counterparty on a net basis. The credit risk equivalent amount may be reduced to the extent of the market value of collateral pledged to and held by the swap dealer or major swap participant to secure an OTC position. The collateral would be subject to the following requirements:

- The collateral must be in the swap dealer or major swap participant's physical possession or control; provided, however, collateral may include collateral held in independent third party accounts as provided under CFTC Regulations Part 23;
- The collateral must meet the requirements specified in a credit support agreement meeting the requirements of CFTC Proposed Regulation 23.151;
- If the counterparty is a SD, MSP or financial entity, as defined in CFTC Regulation 23.150, certain additional requirements apply as described in the proposed CFTC Regulation 23.104(j); and
- Applicable haircuts must be applied to the market value of the collateral.

Once the credit equivalent amount is computed as described above, the SD or MSP would be required to apply a credit risk factor of 50 percent, regardless of any credit rating of the counterparty by any credit rating agency.<sup>133</sup> However, the SD or MSP also may apply to the CFTC for approval to assign internal individual ratings to each of its counterparties, or for an affiliated bank or affiliated broker-dealer to do so. The application will specify which internal ratings will result in application of a 20 percent risk weight, 50 percent risk

<sup>131</sup> For a single over-the-counter position, the potential future exposure, including an OTC position with a negative mark-to-market value, is calculated by multiplying the notional principal amount of the position by the appropriate conversion factor in Table E of the proposed rules. Table E is the same as the table proposed as "Table to 1.3(sss)" in proposed rulemaking issued jointly by the CFTC and SEC for purposes of the further definition of the term "major swap participant." See 75 FR 80174, 80214 (Dec. 21, 2010). Both tables remove any references to credit ratings and require the same charge to be applied to all corporate debt regardless of rating.

<sup>132</sup> 76 FR 6715.

<sup>133</sup> The Basel credit risk factors are determined for counterparties based on credit ratings assigned by credit rating agencies to such counterparties. Section 939A of the Dodd-Frank Act required the CFTC to review and modify regulations that place reliance on credit rating agencies. Accordingly, the CFTC is proposing a 50 percent credit risk factor in lieu of assigning a credit risk factor based on ratings issued by credit rating agencies.

weight, or 150 percent risk weight. Based on the strength of the applicant's internal credit risk management system, the CFTC may approve the application. The SD or MSP must make and keep current a record of the basis for the credit rating for each counterparty, and the records must be maintained in accordance with CFTC Regulation 1.31.

CFTC Proposed Regulation 23.103 specifies required calculations for market risk that are based on Basel "standardized" measurement procedures for assessing market risk arising from positions in traded debt and equity and in commodities and foreign currencies. The Basel standardized approach also includes market risk exposure requirements for options that have debt instruments, equities, foreign currency, or commodities as the underlying positions.

The standardized measure of market risk for equities applies to direct holdings of equity securities, equity derivatives and off-balance-sheet positions whose market values are directly affected by equity prices. The required charge is the sum of the specific risk charge, calculated as described above, and of the general market risk charge, which is equal to 8.0 percent of the difference between the sum of the firm's long and the sum of the firm's short positions. The net long or short position must be calculated separately for each national market.

With respect to debt instruments, applying the "maturity" method under the Basel standardized approach, on and off-balance-sheet debt positions are distributed among a range of timebands and zones that are specified by the Basel Accord, which are designed to take into account differences in price sensitivities and interest rate volatilities across various maturities. The timeband into which a position is distributed is determined by its maturity (fixed rate instruments) or the nearest interest rate reset date of the instrument (floating rates). Long positions are treated as positive amounts and short positions are treated as negative amounts. The net long or short position for each time-band is multiplied by the risk weight specified in a table set forth in the Basel Accord.<sup>134</sup> The resulting risk-weighted position represents the amount by which the market value of that debt position is expected to change for a specified movement in interest rates. The sum of all risk-weighted positions (long or short) across all timebands is the base capital charge for general market risk.

The standardized approach also requires a "time-band disallowance" to address the basis risk that exists between instruments with the same or similar maturities and also the possibly different price movements that may be experienced by different instruments

<sup>134</sup> The risk-weights provided in the table approximate the price sensitivity of various instruments. The price sensitivity of zero coupon and low coupon instruments can be materially greater than that of instruments with higher coupons, and the table therefore assigns higher risk weights to low coupon instruments.

within the same time-band due to the range of maturities (or repricing periods) that may exist within a time-band. To capture this risk, a disallowance of 10 percent is applied to the smaller of the offsetting (long or short) positions within a time-band. This amount would be added to the SD's or MSP's base capital charge.

Additional disallowances address the risk that interest rates along the yield curve are not perfectly correlated and that the risk-weighted positions may not be offset fully. The required disallowances, which apply to the smaller of the offsetting positions, are specified in a table provided under the Basel Accord, and range from 30 percent to 100 percent. The amount of each disallowance varies in size by zone: greater netting is allowed for positions in different time bands but within the same zone than is allowed for positions that are in different zones. An SD's or MSP's general market risk requirement for debt instruments within a given currency would be the sum of (1) the value of its net risk-weighted position and (2) all of its time-band, intra-zone and inter-zone disallowances. The capital charges would be separately computed for each currency in which an SD or MSP has significant positions.

With respect to commodities, the market risk capital requirement for commodities risk applies to holdings or positions taken in commodities, including precious metals, but excluding gold (which is treated as a foreign currency because of its market liquidity). The required charge addresses directional risk, which is the risk that a commodity's spot price will increase or decrease, as well as other important risks such as basis risk, interest rate risk, and forward gap risk.

For purposes of determining the charge, the firm is required to calculate its net position in each commodity on the basis of spot rates. Long and short positions in the same commodity may be netted, and different categories of commodities may be netted if deliverable against each other. Under the "simple" approach under the Basel Accord, the firm's capital charge for directional risk would equal 15 percent of its net position, long or short, in each commodity, and a supplemental charge of 3.0 percent of the gross position in each commodity is added to cover basis, interest rate and forward gap risk.<sup>135</sup>

With respect to foreign exchange, the market risk capital requirement for foreign exchange covers the risk of holding or taking positions in foreign currencies (including gold). The charge is determined by the firm's net positions in a given currency, including its net spot and forward positions; any guarantees that are certain to be called and likely to be irrecoverable; its net future income and expenses that are not yet accrued, but that

<sup>135</sup> The standardized approach will in certain instances offer more than one measurement technique, of increasing degrees of complexity. The "simplified" method for calculating general market risk charges for positions in commodities has been included in the proposed rules.



are already fully hedged; and any other items representing a profit or loss in foreign currencies. For purposes of the calculation, forward and future positions are converted into the reporting currency at spot market rates.

The standardized approach assumes the same volatility for all currencies and requires an SD or MSP to take capital charge equal to 8.0 percent of the sum of (a) its net position in gold and (b) the greater of the sum of the net short positions or the sum of the net long positions in each foreign currency.

With respect to options, the proposed rule is based on the “delta-plus method” under the Basel standardized approach, which includes capital charges related to the option’s delta (its price sensitivity relative to price changes in the underlying security, rate, or index); gamma (the change in delta for a given change in the underlying); and vega (the effect of changes in the volatility of the underlying). The three separate capital charges are computed as follows:

- Delta risk charge—This charge is determined by incorporating options positions in the calculations (including specific risk if applicable) that are required elsewhere in the proposed rule for positions in commodities, foreign currencies, equities, and debt instruments. Specifically, options are included as positions equal to the market value of the underlying instrument multiplied by the delta. To determine the delta, and also gamma and vega, sensitivities of the options, the firm will use option pricing models that will be subject to CFTC’s review.
- Total gamma risk charge—This charge requires the following steps: (1) For each option, perform a “gamma impact” calculation that is based on a Taylor series expansion and expressed in the Basel Accord as:  $\text{Gamma impact} = .05 \times \text{Gamma} \times \text{VU}^2$ . In this formula, VU refers to the variation of the underlying of the option and is computed by multiplying the market value of the underlying by percentages derived from those specified elsewhere in the proposal for commodities, foreign currencies, equities and debt instruments.<sup>136</sup> (2) The gamma impact for each option will be positive or negative, and for options on the same underlying, the individual gamma impacts will be summed, resulting in a net gamma impact for each underlying that is either positive or negative. (3) Net positive gamma impact amounts are disregarded, and the capital charge equals the absolute value of the sum of all of the net negative gamma impact amounts.

<sup>136</sup> Applying the required percentages, VU would be determined for a commodity option by multiplying the market value of the underlying commodity by 15 percent; for a foreign currency by multiplying the market value of the underlying by 8 percent; for an equity or index by multiplying the market value of the underlying by 12 percent or 8 percent respectively, and for options on debt instruments or interest rates, the market value of the underlying multiplied by the risk weights for the appropriate time band as derived from Table A. The text of the rules for the gamma risk charge simplifies the required computation for options with debt instruments or interest rates as the underlying, by providing a table of specific risks weights to be used.

- Total vega risk charge—This charge requires the following steps: (1) Sum the vegas for all options on the same underlying, and multiply by a proportional shift in volatility of  $\pm 25$  percent; 45 and (2) The total capital charge for vega risk will be the sum of the absolute value of the individual capital charges computed for options positions in the same underlying.

The key regulatory objective of the CFTC's FCM and IB net capital rule is to require registrants to maintain a minimum base of liquid assets in excess of their liabilities to finance their business activity. The requirements in CFTC Regulation 1.17 are mostly focused on mitigating market risk, credit risk, and liquidity risk. The early warning notice requirements under CFTC Regulation 1.12, and more particularly the *de facto* higher capital requirements under that regulation, also help increase the cushion available to address the various risks to firm capital, which would include operational and legal risk.

The definitions of the terms "current assets" and "net capital" in CFTC Regulation 1.17(c)(2) and (5) require the FCM to include only generally liquid assets when determining the amount of capital maintained by the firm. "Net capital" means the amount by which the FCM's "current assets," *i.e.*, cash and other assets "commonly identified as expected to be realized as cash or sold during the next 12 months", exceed the firm's total liabilities (except certain subordinated liabilities meeting the specific limitations of CFTC Regulation 1.17(h)). When determining current assets, Regulation 1.17(c)(2) specifically excludes certain items such as unsecured receivables, and further requires that unrealized losses shall be deducted, and unrealized profits shall be added to the extent that they are secured or on exchange-traded positions (as such, the CFTC's capital requirements take account of certain off-balance sheet items in addition to on-balance sheet items). Other assets must be marked to market, including all long and all short positions in commodity options which are traded on a contract market; all listed security options; and all long and all short securities and commodities positions. Further, the rule describes values to be attributed to any commodity option that is not traded on a contract market and to any unlisted security option.

In light of the regulatory emphasis on maintaining liquid assets, CFTC Regulation 1.17(c)(5) also requires deductions from the market values of certain assets to reflect the possibility of price depreciation when liquidated. For example, the definition of "adjusted net capital" in CFTC Regulation 1.17(c)(5) specifies certain required deductions with respect to the FCM's or IB's proprietary futures and options on futures positions; its inventory, fixed price commitments, and forward contracts; and also its securities and security options. The required deductions are also referred to as "haircuts", and are reductions of the market values of these assets by a set percentage, *e.g.*, the firm must generally deduct twenty percent of the market value of its proprietary forward contracts.

The SEC's net capital rule for securities broker-dealers also specifies "haircuts" for certain

	<p>assets of the broker-dealer. The CFTC generally has harmonized the haircuts applied to securities and securities options under CFTC Regulation 1.17(c)(5) with the haircuts required under the SEC's net capital rule. For example, both the SEC's and the CFTC's regulations require a deduction of fifteen percent of the value of equities. For certain firms, the SEC and CFTC also may permit the firm to apply internal models to determine "alternative" market risk and credit risk charges to be applied to a portfolio of trading securities.</p>
3.	<p>Are capital adequacy requirements sensitive to the quantum of risks undertaken; that is, does required capital increase as risk increases, e.g., in the event of large market moves?</p> <p>Yes. CEA Section 4s(e)(2)(C) requires the CFTC, in setting capital requirements for a person designated as a swap registrant for a single type or single class or category of swap or activities, to take into account the risks associated with other types/classes/categories of swap and other activities conducted by that person that are not otherwise subject to regulation by virtue of their status as an SD or MSP. CEA Section 4s(e)(3)(A) also refers to the need to offset the greater risk that swaps that are not cleared pose to SDs, MSPs, and the financial system, and the CFTC, SEC, and prudential regulators are directed to adopt capital requirements that: (1) help ensure the safety and soundness of the registrant; and (2) are appropriate for the risk associated with the uncleared swaps held by the registrants.</p> <p>The "risk-based" capital requirements of FCMs are directly related to increases in margin requirements for the futures and options positions of their customers and noncustomers. Further, FCMs and IBs with proprietary positions in futures or options on futures must deduct from their net capital 100 percent of the margin requirements for such positions (or 150 percent if the FCM is not a clearing member of the organization clearing such positions). Also, FCMs' and IBs' capital requirements reflect market moves because their assets are required to be marked to market.</p>
4.	<p>Are capital standards designed to allow an intermediary to absorb some losses and to wind down its business over a relatively short period without loss to its clients or disrupting the orderly functioning of the markets?</p> <p>Yes. CFTC Regulation 23.603 requires an SD or MSP to establish and maintain a written business continuity and disaster recovery plan that outlines the procedures to be followed in the event of an emergency or other disruption of its normal business activities. The business continuity and disaster recovery plan must be designed to enable the SD or MSP to continue or to resume any operations by the next business day with minimal disturbance to its counterparties and the market, and to recover all documentation and data required to be maintained by applicable law and regulation.</p> <p>CFTC Regulation 1.17, which is the net capital requirement for FCMs, is designed for exactly such purpose, along with the CFTC regulations which govern the treatment of the customer funds of commodity and swaps customers. Reporting of customer funds custody is now daily, and the CFTC has independent access to verify balances with depositories should concerns arise. Should there be any discrepancy in the reported segregation of customer funds, the CFTC has the ability to order the transfer of customer accounts and cessation of FCM business. The net capital requirement is designed to</p>

	<p>provide a buffer of assets as a backstop to any customers bearing losses. Significant new customer protection regulations were adopted by the CFTC in the aftermath of the MF Global bankruptcy. Accounts were transferred in that bankruptcy to solvent FCMs and such bankruptcy did not result in market disruption despite a shortfall in customer funds, but customer accounts were not able to be transferred with full customer funds as there was a reported shortfall in the customer funds. However eventually, all customers were able to be fully repaid as capital and claims were liquidated.</p>
5.	<p>Are relevant market intermediaries required to maintain records such that capital levels can be readily determined at any time?</p> <p>Yes. CFTC Regulation 23.201(b)(2) requires SDs and MSPs to maintain records reflecting all assets and liabilities, income and expenses, and capital accounts as required by the CEA and CFTC regulations.</p> <p>CFTC Regulation 1.17(a)(3) expressly provides that each FCM and IB must be in compliance with capital requirements “at all times and must be able to demonstrate such compliance to the satisfaction of the CFTC or the designated SRO.” CFTC Regulation 1.12 requires immediate notification to the CFTC and the designated SRO should an FCM not be in compliance with minimum capital requirements. Net capital computations are routinely reported to the Commission and SROs as of month end in the regular financial reporting required by Commission Regulation 1.10. Other relevant recordkeeping requirements relating to the financial condition of FCMs and IBs and to the customer funds held by FCMs are summarized below.</p> <p>CFTC Regulation 1.18 requires FCMs and IBs to prepare and keep current ledgers which show each transaction affecting asset, liability, income, expense and capital accounts consistently with the Form 1-FR (or the FOCUS Report if a securities broker-dealer). CFTC Regulation 1.27 requires each FCM that invests customer funds to keep a record which shows the details of the investment, including the size and type of investment, the date of the investment, and any disposition made of the investment. CFTC Regulation 1.32 requires an FCM to compute each day the customer funds in segregated accounts and the FCM's residual interest in those funds, and to keep a record of each such computation.</p> <p>Pursuant to Regulation 1.31, all books and records required by the CEA and CFTC regulations must be kept for a period of five years and must be readily accessible during the first 2 years of the 5-year period. All books and records must be open to inspection by any representative of the CFTC or DOJ.</p>
6.	<p>Are the detail, format, frequency and timeliness of reporting to the regulator and/or the SRO sufficient to reveal a significant deterioration in the capital adequacy position of market intermediaries?</p> <p>Yes. Section 4s(f)(1)(A) of the CEA requires each registered SD and MSP to make such reports as are required by CFTC rule or regulation regarding the SD's or MSP's financial condition. The CFTC has proposed Regulation 23.106, which requires certain SDs and MSPs to file monthly unaudited financial statements and annual audited financial</p>

statements with the CFTC and with any registered futures association of which they are members.<sup>137</sup>

The proposed financial statements under proposed Part 23 would include a statement of financial condition; a statement of income or loss; a statement of cash flows; and a statement of changes in stockholders', members', partners', or sole proprietor's equity. The financial statements also would include a schedule reconciling the firm's equity, as set forth in the statement of financial condition, to the firm's regulatory capital by detailing any goodwill or other intangible assets that are required to be deducted from the SD's or MSP's equity in order to compute its net tangible equity as required under CFTC Proposed Regulation 23.101. The schedule would further disclose the firm's minimum required capital under CFTC Proposed Regulation 23.101 as of the end of the month or end of its fiscal year, as applicable, and the amount of regulatory capital it held at such date.

The proposed financial statements would be required to be prepared in accordance with generally accepted accounting principles as established in the United States, using the English language, and in U.S. dollars. The unaudited financial statements would be required to be filed within 17 business days of the end of each month and the annual audited financial statements would be required to be filed within 90 days of the end of the SD's or MSP's fiscal year.

CFTC Proposed Regulation 23.105 would require SDs and MSPs to provide the CFTC, and the registered futures association of which the SDs or MSPs are members, with written notice in the event of certain enumerated financial or operational issues. The proposed notice provisions would require an SD or MSP to give telephonic notice to the CFTC, followed by a written notice, whenever it knows or should know that the firm does not maintain tangible net equity in excess of its minimum requirement under CFTC proposed Regulation 23.101. The SD or MSP also would be required to file documentation containing a calculation of its current tangible net equity with its notice of undercapitalization.

CFTC Proposed Regulation 23.105 also would require an SD or MSP to file a written notice with the CFTC whenever its tangible net equity fails to exceed 110 percent of its minimum tangible net equity requirement as computed under CFTC proposed Regulation 23.101. The SD or MSP would be required to file the notice within 24 hours of failing to maintain tangible net equity at a level that is 110 percent or more above its minimum tangible net equity requirement. CFTC Proposed Regulation 23.105 also would require a registered SD or MSP to provide written notice of its failure to maintain current books and records, or of a substantial reduction in capital as previously reported to the CFTC. Pursuant to CFTC proposed Regulation 23.105(g), the CFTC could require the SD or MSP to file financial or

<sup>137</sup> CFTC Proposed Regulation 23.106 would apply to SDs and MSPs, except any SDs or MSPs that are subject to the capital requirements of a prudential regulator, or designated by the FSOC as a Systemically Important Financial Institution ("SIFI"). SDs and MSPs that are subject to regulation by a prudential regulator would comply with the applicable financial reporting obligations imposed by such prudential regulator. SDs and MSPs that are designated as SIFIs would comply with any financial reporting obligations imposed by the Federal Reserve.

operational information on a daily basis or at such other times as the CFTC may specify.

CFTC Regulation 1.10(d) requires each FCM to prepare and to file unaudited financial condition reports, Form 1-FR-FCM, within 17 business days of the close of business each month with the CFTC and the FCM's DSRO. An FCM also is required to file a Form 1-FR-FCM audited by an independent public accountant as of the end of the FCM's fiscal year. The audited financial Form 1-FR-FCM is required to be filed with the CFTC and with the FCM's DSRO within 60 calendar days of the date of the FCM's fiscal year end. CFTC Regulation 1.10(d) prescribes the contents of both monthly and annual financial reports, which must include net capital computations as well as separate reports of customer funds held for futures customers, foreign futures and options customers, and cleared swaps customers.

CFTC Regulation 1.12(b) requires an FCM who knows or should know that its adjusted net capital at any time is less than the minimum required by CFTC Regulation 1.17, or by the capital rule of any SRO to which such person is subject, to give immediate notice to the CFTC and the FCM's DSRO. CFTC Regulation 1.12(c) requires a registrant to provide same-day reporting if it fails to make or keep current books and records required by CFTC regulations.

In addition, CFTC Regulation 1.12(g)(1) requires that, if for any reason the net capital of an FCM declines by 20 percent or more from the amount last reported, the FCM must provide notice within 2 business days of the event or series of events causing the reduction in net capital. CFTC Regulation 1.12(f) also provides for immediate notice when an FCM has accounts that are undermargined or subject to a margin call that exceeds its excess net capital.

7. Is the financial position of the intermediary subject to audit by independent auditors to provide additional assurance that the financial position reflects the risk that the intermediary undertakes?

CFTC proposed Regulation 23.106 requires certain SDs and MSPs to file annual audited financial statements with the CFTC and with any registered futures association of which they are members. This proposed rule applies to SDs and MSPs that are not subject to the capital requirements of a prudential regulator, or designed by the FSOC as a SIFI. SDs and MSPs described by the previous sentence would comply with the auditing obligations imposed by the prudential regulator or Federal Reserve Board, as applicable. As proposed, the audited reports must include the following:

- A statement of financial condition;
- Statements of income (loss), cash flows, and changes in ownership equity;
- Appropriate footnote disclosures; and
- Schedules which, depending on the SD or MSPs capital requirements, could list net equity, intangible assets, minimum tangible net equity requirement, excess or deficiency in its regulatory capital, and/or minimum risk-based capital ratio

requirements.

With respect to FCMs, RFEDs, and IBs, CFTC Regulation 1.10 establishes requires the filing of certified financial reports with the CFTC. CFTC Regulation 1.16 provides that the term “certified” means that a financial report has been audited and reported upon with an opinion expressed by an independent certified public accountant. For certification of FCM reports, an auditor must be registered with and subject to examinations by the PCAOB. See further discussion in answers with respect to Principle 19.

In order to satisfy the requirements of CFTC Regulation 1.16(d), the audit performed by the independent accountant must be conducted in accordance with the auditing standards of the PCAOB. The procedures must include a review and appropriate tests of the accounting system, internal accounting controls, and the procedures for safeguarding customer and firm assets. These procedures must be adequate to provide reasonable assurance that they will discover any material deficiencies in the accounting system, in the internal accounting controls, and the procedures for safeguarding customer and firm assets. The accountant must also review the FCM's computations of minimum financial requirements and its daily computations of the segregation requirements under Section 4d(a)(2) of the CEA.

CFTC Regulation 1.16(d)(2) provides that deficiencies in the FCM's or IB's procedures are considered to be material inadequacies if, in the absence of corrective steps, they could reasonably be expected to inhibit the FCM's or IB's ability to complete transactions promptly or to discharge responsibilities to customers or creditors; to result in material financial loss; to cause material misstatements in the FCM's or IB's financial statements and schedules; or to produce violations of the CFTC's segregation, secured amount, recordkeeping, or financial reporting requirements, which could reasonably be expected to result in impediments to meeting its obligations, material financial loss, or inaccurate financial reports.

An accountant who discovers any such material inadequacy in the course of an audit is required under CFTC Regulation 1.16 to notify the FCM or IB, who, in turn, must notify the CFTC, NFA and the appropriate DSRO. A copy of the notice must also be given to the accountant within three business days after it is filed. The accountant is to advise the NFA, in the case of an applicant, or the CFTC and the DSRO, in the case of a registrant, within three business days if he or she does not receive a copy of the notice and must notify those regulatory units of any disagreement with the FCM's submission within three business days after receiving the copy of the FCM's notice.

8. Does the regulator:

(a) Regularly review market intermediaries' capital levels?

Yes. The CFTC itself does not conduct routine on-site direct inspections of intermediaries, but may include an on-site visit to a firm as part of the responsive action taken when a firm files any early warning or other notification required under CFTC regulations. Under the CEA, SROs are required to develop programs to assess whether FCMs and IBs are in compliance with exchange and CFTC minimum financial and related reporting requirements. CFTC Regulation 1.52 establishes the minimum components for a DSRO's examination program. Both the CFTC and the SROs also receive and review monthly



	financial reports that include the statement of the computation of minimum capital requirements, as described in response to Principle 30, Question 6.
	(b) Take appropriate action when these reviews indicate material deficiencies?
	Yes. If a review performed by either the SRO or the CFTC indicates a material deficiency in capital, the CFTC may impose the restrictions described in the response to Principle 32, Question 1.
9.	Does the regulator:
	(a) Have specific authority to impose restrictions on an intermediary's regulated business activities and more stringent capital monitoring and/or reporting requirements if an intermediary's capital deteriorates so as to endanger its capacity to fulfil its obligations or when it falls below minimum requirements?
	<p>Yes. Several CFTC regulations enable the Commission to require more frequent reporting and/or to impose restrictions on the intermediary's business.</p> <p>CFTC Proposed Regulation 23.105 would require SDs and MSPs to provide the CFTC, and the registered futures association of which the SDs or MSPs are members, with written notice in the event of certain enumerated financial or operational issues. The proposed notice provisions would require an SD or MSP to give telephonic notice to the CFTC, followed by a written notice, whenever it knows or should know that the firm does not maintain tangible net equity in excess of its minimum requirement under CFTC Proposed Regulation 23.101. The SD or MSP also would be required to file documentation containing a calculation of its current tangible net equity with its notice of undercapitalization.</p> <p>CFTC Proposed Regulation 23.105 also would require an SD or MSP to file a written notice with the CFTC whenever its tangible net equity fails to exceed 110 percent of its minimum tangible net equity requirement as computed under CFTC proposed regulation 23.101. The SD or MSP would be required to file the notice within 24 hours of failing to maintain tangible net equity at a level that is 110 percent or more above its minimum tangible net equity requirement. CFTC Proposed Regulation 23.105 also would require a registered SD or MSP to provide written notice of its failure to maintain current books and records, or of a substantial reduction in capital as previously reported to the CFTC.</p> <p>Pursuant to CFTC Regulation 1.17(a)(4), if an FCM holds less capital than the amount specified in its minimum capital requirement, then it generally must transfer all customer accounts and immediately cease conducting business as an FCM, until such time as the FCM is able to demonstrate compliance with its minimum capital requirement.</p> <p>Pursuant to CFTC Regulation 190.04(d)(2), the trustee appointed to administer the bankruptcy proceedings of an FCM is not permitted to purchase or sell new commodity contracts for the customers of such FCM, with the exceptions noted below. In general, CFTC Regulation 190.04(d)(2) presumes that an FCM subject to bankruptcy proceedings is insolvent and, therefore, that such FCM does not have sufficient capital to operate its</p>



business, which business may include supporting the credit of its customers or performing on other obligations. Thus, in restricting the conduct of the trustee, CFTC Regulation 190.04(d)(2) aims to minimize the risk of loss to customers of the FCM.

However, CFTC Regulation 190.04(d)(2) recognizes that, even where an FCM is insolvent, certain purchases or sales of new commodity contracts may be risk-reducing, and thus may prevent material erosion in value of open commodity contracts constituting customer assets. Therefore, CFTC Regulation 190.04(d)(2) permits the trustee to engage in such purchases or sales to achieve any of the following purposes: (i) to offset an open commodity contract; (ii) to transfer any transferable notice applicable to an open commodity contract; or (iii) to cover or partially cover, with the approval of the CFTC, inventory or commodity contracts of the FCM that cannot be immediately liquidated due to market conditions (including price limits).

CFTC Regulation 1.12(a) requires immediate notice and updated capital computations if the FCM's capital falls below the actual required minimum (as opposed to the capital levels that would merely trigger an early warning report under Regulation 1.12(b) described above).

CFTC Regulation 1.17(a)(4) provides that an FCM that fails to demonstrate that it holds sufficient capital to meet the required minimum must transfer all customer accounts and immediately cease doing business as a FCM until such time as the FCM is able to demonstrate compliance with the capital requirements. However, the FCM may trade for liquidation purposes only during this period unless prohibited from doing so by its DSRO or the CFTC. Moreover, the CFTC or DSRO, at its discretion, may provide the FCM with an additional 10 business days to achieve compliance without transferring accounts and ceasing business, if the FCM can demonstrate its ability to achieve compliance within this period.

CFTC Regulation 1.17(e) provides that the CFTC may, by written order, temporarily prohibit equity withdrawals by an FCM that would reduce excess adjusted net capital by 30 percent or more. Such orders would be based on the CFTC's determination that the withdrawal transactions could be detrimental to the financial integrity of FCMs or could adversely affect their ability to meet customer obligations.

	(b) Is there evidence that the regulator exercises this authority?
	Yes. CFTC Regulation 1.10(b)(4) provides that upon notice of any representative of the CFTC, an FCM or IB must provide more frequent Form 1-FR information, or such other financial information as may be requested by such representative. The CFTC and DSROs have in the past required FCMs to do daily instead of monthly capital reporting.
10.	Does the prudential framework address risks from outside the regulated entity, for example from unlicensed affiliates and off-balance sheet affiliates?
	<p>Yes.. CFTC proposed Regulation 23.102 would require an SD or MSP in computing its tangible net equity to consolidate the assets and liabilities of any subsidiary or affiliate for which the SD or MSP guarantees the obligations or liabilities. The proposal further provides that the SD or MSP may consolidate the assets and liabilities of a subsidiary or affiliate of which the SD or MSP has not guaranteed the obligations or liabilities, provided that the SD or MSP has obtained an opinion of counsel stating that the net asset value of the subsidiary or affiliate, or the portion of the net asset value attributable to the SD or MSP, may be distributed to the SD or MSP within 30 calendar days. Lastly, the proposal would further require that each SD or MSP included within the consolidation must at all times be in compliance with its respective minimum regulatory capital requirements. CFTC Proposed Regulation 23.103 provides that for purposes of computing specific and general market risk charges to capital, off-balance sheet positions are included.</p> <p>Affiliate risk generally is addressed through reporting and filing requirements under CFTC Regulations 1.14 and 1.15. Also, as discussed in the response to Principle 30, Question 2, certain off-balance sheet items must be reported as non-current assets in the capital computations of FCMs and IBs.</p>

<b>Principle 31</b>	<b>Market intermediaries should be required to establish an internal function that delivers compliance with standards for internal organization and operational conduct, with the aim of protecting the interests of clients and their assets and ensuring proper management of risk, through which management of the intermediary accepts primary responsibility for these matters.</b>
<b>Key Questions</b>	
<i>Management and Supervision</i>	
1.	With regards to an intermediary's internal organization, does the regulatory framework require the following to be considered:
(a)	An appropriate management and organization structure, including in relation to activities that have been outsourced?
(b)	Adequate internal controls?
(c)	Management that is required to bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the whole firm?
<p>Yes, to all of the above. CFTC Regulation 23.602 requires SDs and MSPs to establish and maintain a system to diligently supervise, all activities relating to its business performed by its partners, members, officers, employees, and agents (or persons occupying a similar status or performing a similar function). Such system shall be reasonably designed to achieve compliance with the requirements of the CEA and CFTC Regulations. The supervisory system shall provide for the designation of at least one person with the authority to carry out the supervisory responsibilities of the SD or MSP, and the use of reasonable efforts to determine that all supervisors are qualified and meet such standards of training, experience, competence, and other qualifications that the CFTC finds necessary or appropriate.</p> <p>To help ensure compliance by registrants with these operational conduct requirements, CFTC Regulation 166.3 requires each registrant (except APs with no supervisory duties), to "diligently supervise" the handling by its partners, officers, employees and agents of all activities relating to its business as a CFTC registrant. Also, the review of FCM internal procedures falls within the scope of SRO audit and surveillance obligations under CFTC Regulation 1.52. SRO obligations under this CFTC regulation include monitoring and auditing compliance by FCMs with their minimum financial and related reporting requirements, and also receiving the financial reports that all FCMs are required to file. In addition, CFTC Regulation 1.11 imposes requirements for FCMS to have risk management policies and procedures in place.</p>	
2.	Does the regulatory framework require market intermediaries to provide all relevant information about the business in a timely, readily accessible way and to regularly report to management? Is such information subject to procedures intended to maintain its security, availability, reliability and integrity?
Yes. CFTC Regulation 23.600(c)(1) provides that the risk management program take into account market, credit, liquidity, foreign currency, legal, operational, settlement, and other	

risks, together with a description of the risk tolerance limits set by the SD or MSP and the underlying methodology in written policies and procedures. The risk tolerance limits shall be reviewed and approved quarterly by senior management and annually by the governing body.

CFTC Regulation 23.600(c)(2) requires the risk management unit of each SD and MSP to provide to senior management and to its governing body quarterly written reports setting forth the market, credit, liquidity, foreign currency, legal, operational, settlement, and any other applicable risk exposures of the SD or MSP; any recommended or completed changes to the risk management program; the recommended time frame for implementing recommended changes; and the status of any incomplete implementation of previously recommended changes to the risk management program. The reports also shall be provided to the senior management and the governing body immediately upon detection of any material change in the risk exposure of the SD or MSP.

CFTC Regulation 23.600(d)(7) requires all trade discrepancies to be documented and brought to the immediate attention of management of the business trading unit. CFTC Regulation 23.600(e)(2) requires SDs' and MSPs' risk management programs to be reviewed and tested annually, or upon any material change in the business of the SD or MSP that is reasonably likely to alter the risk profile of the SD or MSP. The results of these reviews shall be promptly reported to and reviewed by the chief compliance officer, senior management, and governing body of the SD or MSP.

CFTC Regulation 23.601 requires SDs and MSPs to establish and enforce written policies and procedures reasonably designed to monitor for and prevent violations of applicable CFTC, DCM or SEF position limits and to monitor for and prevent improper reliance upon any exemptions or exclusions from such position limits. SDs and MSPs shall implement an early warning system to detect and alert senior management when position limits are in danger of being breached. Any detected violation of position limits shall be reported promptly to the firm's governing body. SDs and MSPs shall document compliance with position limits on a quarterly basis. The report shall be promptly reported and reviewed by the CCO, senior management and governing body of the SD and MSP.

CFTC Regulation 23.603 requires SDs and MSPs to establish and maintain a written business continuity and disaster recovery plan that outlines the procedures to be followed in the event of an emergency or other disruption of its normal functions. A member of the senior management of the SD or MSP shall review the business continuity and disaster recovery plan annually or upon any material change to the business. Any deficiencies found or corrective action taken shall be documented.

CFTC Regulation 1.11 contains the risk management program requirements for FCMs, which includes a supervisory system to ensure the program is followed, as well as review and testing by internal audit independent of the business unit, or a third party audit service reporting to staff independent of the business unit. The annual review of the risk management program must be reported to the chief compliance officer, senior management and the governing body of the FCM. All records and reports including written policies and procedures and copies of all written approvals are subject to the CFTC's recordkeeping requirements under CFTC Regulation 1.31, which covers availability,

	accessibility and integrity.
3.	<p>Does the regulatory framework require a market intermediary to be subject to an objective, periodic evaluation of its internal controls and risk management processes?</p> <p>Yes. CFTC Regulation 23.600 requires each SD and MSP to establish, document, maintain, and enforce a system of risk management policies and procedures designed to monitor and manage the risks associated with the swaps activities of the SD or MSP. The risk management program must identify risks and risk tolerance limits, provide senior management with periodic risk exposure reports, and identify and take into account the risks of new products prior to engaging in transactions on those products. CFTC Regulation 23.600(e) requires risk management programs to be tested annually or upon any material change in the SD's or MSP's business that is reasonably likely to alter the risk profile of the SD or MSP. The annual reviews must include an analysis of adherence to, and the effectiveness of the risk management policies and procedures and any recommendations for modifications thereto. The annual testing must be performed by qualified internal audit staff that are independent of the business trading unit being audited or by a qualified third party audit service reporting to staff that are independent of the business trading unit. The results of the quarterly reviews must be promptly reported to and reviewed by the CCO, senior management and the governing body of the SD or MSP. Each SD and MSP must document all internal and external reviews and testing of its risk management program and written risk management policies and procedures including the date of the review or test; the results; any deficiencies identified; the corrective action taken; and the date that corrective action was taken. Such documentation must be provided to CFTC staff upon request.</p> <p>CFTC Regulation 1.10 establishes a requirement for review of certain FCM operations by outside auditors, as a result of the requirement that FCMs file certified annual financial reports with the CFTC. CFTC Regulation 1.16 provides that the term "certified" means that a financial report has been audited and reported upon with an opinion expressed by an independent certified public accountant.</p> <p>In order to satisfy the requirements of CFTC Regulation 1.16, the audit performed by the independent accountant must be conducted in accordance with the audit standards of the PCAOB. The procedures must include a review and appropriate tests of the accounting system of the FCM or IB, the FCM's or IB's internal accounting controls, and the procedures of the FCM or IB for safeguarding customer and firm assets. These procedures must be adequate to provide reasonable assurance that they will discover any material deficiencies in the accounting system, in the internal accounting controls, and in the FCM's or IB's system for safeguarding customer and firm assets. Deficiencies in the FCM's or IB's procedures are considered to be material inadequacies if, in the absence of corrective steps, they could reasonably be expected to inhibit the FCM's or IB's ability to complete transactions promptly or to discharge responsibilities to customers or creditors; to result in material financial loss; to cause material misstatements in the FCM's or IB's financial statements and schedules; or to produce violations of the CFTC's segregation, secured amount, recordkeeping, or financial reporting requirements, which could reasonably be expected to result in impediments to meeting its obligations, material</p>

<p>financial loss, or inaccurate financial reports.</p> <p>An accountant who discovers any such material inadequacy in the course of an audit is required under CFTC Regulation 1.16 to notify the FCM or IB, who, in turn, must notify the CFTC, NFA and the appropriate DSRO. A copy of the notice must also be given to the accountant within three business days after it is filed. The accountant is to advise the NFA, in the case of an applicant, or the CFTC and the DSRO, in the case of a registrant, within three business days if he or she does not receive a copy of the notice and must notify these regulatory bodies of any disagreement with the FCM's submission within three business days after receiving the copy of the FCM's notice.</p> <p>CFTC Regulation 1.11 prescribes the requirements for an FCM's risk management program, including the supervision, annual independent testing and review and reporting to the FCM's governing body, and recordkeeping of compliance with the requirements.</p>	
<i>Organizational requirements</i>	
4.	Does the regulatory framework include the assessment of an intermediary's compliance function, taking into account the intermediary's size and business? When the regulator becomes aware of deficiencies are steps taken to require market intermediaries to improve their compliance function?
	Yes. CFTC Regulation 1.52 governs the CFTC's DSRO examination program for FCMs, and it includes consideration of high risk firms in scope setting, as discussed in Principles 19-21. NFA will begin conducting on-site examinations of SDs and MSPs during summer 2014, and DSIO is in the process of initiating examination activities for SDs and MSPs.
5.	Does the regulatory framework require a market intermediary to establish and maintain appropriate systems of client protection, risk management and internal and operational controls, including policies, procedures, and controls relating to all aspects of its day-to-day business intended reasonably to ensure:
	(a) The integrity of the firm's dealing practices, including the treatment of all clients in a fair, honest and professional manner?
	(b) Appropriate segregation of key duties and functions, particularly those duties and functions which, when performed by the same individual, may result in undetected errors or may be susceptible to abuses which expose the firm or its clients to inappropriate risks?
	Yes, to all of the above. CFTC Regulations require intermediaries to establish and maintain appropriate systems of client protection. CFTC Regulation 23.402(b) requires SDs to implement policies and procedures reasonably designed to obtain and retain a record of the essential facts concerning each counterparty whose identity is known to the SD prior to the execution of the transaction that are necessary for conducting business. CFTC Regulation 23.402(c) requires the SD or MSP to obtain a record showing the true name and address of each counterparty whose identity is known to the SD or MSP prior to the execution of the transaction, the principal occupation or business of such counterparty, and the name and address of any other person guaranteeing the performance of such counterparty and any person exercising any control with respect to the positions of the

counterparty. CFTC Regulation 23.430 requires an SD or MSP to verify that a counterparty meets the eligibility standards for an eligible contract participant, as that term is defined by the CEA, before offering to enter into a swap with that counterparty.

CFTC Regulation 23.431(a)(1) requires an SD or MSP to disclose to non-dealer counterparties, material information concerning the swap in a manner reasonably designed to allow the counterparty to assess the material risks and characteristics of the swap and the incentives and conflicts of interest that the SD or MSP may have in connection with the swap. CFTC Regulation 23.433 requires any communication between an SD or MSP and any counterparty to be conducted in a fair and balanced manner based on principles of fair dealing and good faith.

CFTC Regulation 166.2 prohibits FCMs, RFEDs, and IBs from effecting a transaction in a commodity interest for the account of any customer unless the person designated by the customer to control the account specifies the precise commodity interest to be purchased and sold and the exact amount to be purchased or sold.

CFTC regulations require SDs and MSPs to establish, document, maintain, and enforce a system of risk management policies and procedures designed to monitor and manage the risks associated with the swaps activities of the SD or MSP. The program must include policies and procedures necessary to monitor and manage market risk, credit risk, liquidity risk, foreign currency risk, legal risk, operational risk, and settlement risk. The risk management program must include, at a minimum, the identification of risks and risk tolerance limits; provide to senior management and to its governing body quarterly written reports setting forth the market, credit, liquidity, foreign currency, legal, operational, settlement and any other applicable risk exposures of the SD or MSP; and a new product policy designed to identify and take into account the risks of any new product prior to engaging in transactions involving the new product.

CEA Section 4s(j)(5)(A) requires the SD and MSP to implement conflict of interest systems and procedures that establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity or swap acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate information partitions within the firm from the review, pressure or oversight of persons whose involvement in pricing, trading or clearing activities might potentially bias their judgment or supervision and contravene the Core Principles of open access and the business conduct standards described in the CEA.

CFTC Regulation 23.605(c) restricts SD and MSP non-research personnel from directing a research analyst's decision to publish a research report of the SD or MSP and non-research personnel must not direct the views and opinions expressed in a research report of the SD or MSP. Research analysts cannot be subject to the supervision or control of any employee of the SD's or MSP's business trading unit or clearing unit. Communications relating to derivatives to a current or prospective counterparty by a



research analyst must not omit any material fact or qualification that would cause the communication to be misleading.

CFTC Regulation 23.605(d) prohibits SDs or MSPs from interfering with or attempting to influence the decision of the clearing unit of any affiliate clearing member of a derivatives clearing organization (DCO) to provide clearing services and activities to a particular customer. SDs and MSPs must create and maintain informational partitions between business trading units and clearing units of any affiliated clearing member of a DCO. At a minimum, such informational partitions must require that no employee of a business trading unit shall supervise, control or influence any employee of the clearing unit of any affiliated clearing member of a DCO.

CFTC Regulation 23.605(e) requires the SD or MSP to adopt and implement written policies and procedures that mandate the disclosure to its counterparties of any material incentives and any material conflicts of interest regarding the decision of a counterparty of whether to execute a derivative on a SEF or a DCM or whether to clear on a DCO.

To help ensure compliance by registrants with specific operational conduct requirements CFTC Regulation 166.3 requires each registrant (except APs with no supervisory duties), to “diligently supervise” the handling by its partners, officers, employees and agents of all activities relating to its business as a CFTC registrant. CFTC Regulation 1.71(c) prohibits non-research personnel from directing a research analyst’s decision to publish a research report of the FCM or IB, and non-research personnel must not direct the views and opinions expressed in a research report of the FCM or IB and must not review or approve a research report of the FCM or IB before its publication. Research analysts must not be subject to the supervision or control of any employee of the FCM’s or IB’s trading unit or clearing unit and no employee of the business trading unit or clearing unit may have any influence or control over the evaluation or compensation of a research analyst.

CFTC Regulation 1.11 requires FCMs to have a comprehensive risk management program, subject to supervision, independent testing and review, and reporting to the FCM’s governing body, and CFTC Regulation 1.55 requires FCMs to make firm-specific disclosures publicly available.



6.	Taking into account Principle 8, does the regulatory framework require a market intermediary:
(a)	To endeavour to address a conflict of interests arising between its interests and those of its clients or between its clients?
(b)	Where the potential for conflicts arises, to have mechanisms in place to manage conflicts of interests that seek to ensure an unbiased decision making process, fair treatment of all its clients and consider further steps if these prove inadequate, which may include disclosure of the conflict, internal rules of confidentiality, declining to act where a conflict cannot be resolved?
	<p>Yes, to all of the above. CFTC Regulation 23.431(a)(3) requires SDs and MSPs to disclose to any counterparty to the swap, the material incentives and conflicts of interest that the SD or MSP may have in connection with a particular swap including any compensation or other incentive from any source that the SD or MSP may receive in connection with the swap.</p> <p>Part 155 of the CFTC's regulations requires FCMs and IBs to establish and enforce internal rules, procedures and controls to insure, to the extent possible, that orders received from customers are transmitted before any order in the same commodity for the benefit of a proprietary account. These CFTC regulations prevent FCMs and IBs and their affiliated persons from using their knowledge of customer orders to the customer's disadvantage and have helped the CFTC to deter such practices as "front-running" and "trading ahead." CFTC Regulation 1.55 requires the FCM to make firm-specific disclosures, and also requires that policies and procedures be adopted to ensure that advertising and solicitation are not misleading.</p>
7.	If DEA is allowed, does the regulatory framework require market intermediaries to use controls, including automated pre-trade controls, which can limit or prevent a DEA client from placing an order that exceeds the intermediary's existing position or credit limits?
	<p>Yes. CFTC Regulation 38.607 requires a DCM that permits direct electronic access by customers to have in place effective systems and controls reasonably designed to facilitate the FCM's management of financial risk, such as automated pre-trade controls that enable member FCMs to implement appropriate financial risk limits. A DCM must implement and enforce rules requiring the member FCMs to use the provided systems and controls.</p> <p>Commission Regulation 37.202 requires a SEF to provide impartial access to markets and market services. This has been interpreted by DMO to mean that a SEF should allow participants to access its platform via intermediation or direct access. The controls surrounding this access include the SEF requiring the eligible contract participant (ECP) to provide the SEF with written or electronic confirmation of its status as an ECP, as defined by the Act and Commission regulations, prior to obtaining access to the SEF. In addition, prior to granting access to the ECP, the SEF must require that the ECP consent to it jurisdiction.</p> <p>CFTC Regulation 48.7 requires an FBOT's trading system to comply with the IOSCO Principles for the Oversight of Screen-Based Trading Systems for Derivative Products, which, among other things, provides that the relevant regulatory authorities and the</p>

<p>exchange should consider risk management exposures pertinent to the system, including taking measures to reduce risk by permitting credit controls or position limits to be programmed into the system. Additionally, as part of the CFTC's FBOT registration process, an applicant for registration is required to provide information about: risk management mechanisms for members allowing customers to place orders; any pre- and post-trade risk management controls made available to system users; the laws, rules, regulations, and policies that govern the supervision and oversight of market intermediaries who may deal with members and other participants located in the United States, including recordkeeping requirements, the protection of customer funds, and procedures for dealing with the failure of an intermediary; and rules determining access requirements with respect to the persons that may trade on the FBOT, and the means by which they connect to it. The CFTC evaluates this information as part of its determination of whether the FBOT is eligible to be registered, and whether the FBOT's home regulator supports and enforces regulatory objectives that are substantially equivalent to those supported and enforced by the CFTC in its oversight of DCMs, such as the regulatory objectives of CFTC Regulation 38.607, described above.</p>	
<p><i>Protection of clients</i></p>	
<p>8. If a market intermediary has control of, or is otherwise responsible for, assets belonging to a client which it is required to safeguard, are there regulations that require proper protection for them (for example, segregation and identification of those assets) by the intermediary? Do these measures facilitate the transfer of positions and assist in the orderly winding up in the event of financial insolvency and the return of client assets?</p>	
<p>Yes. With respect to customer funds held by FCMs, CEA Section 4d(a)(2) and CFTC Regulation 1.20 both state that FCMs must separately account for customer funds on their books and records, and segregate such customer funds from their own funds and funds of other persons. The FCM is permitted to pool all customer funds in a single account, which must be clearly identified as belonging to customers. Customer funds must be deposited by the FCM with a bank, trust company, DCO, or another FCM. The FCM is further obligated to obtain a letter from the depository acknowledging that the funds deposited represent customer assets under the CEA and that the depository may not offset any obligation that the depositing FCM may have with the depository by the funds maintained in a segregated account.</p> <p>To be in compliance with the CFTC's segregation requirements, an FCM must always maintain in accounts segregated in accordance with CEA Section 4d(a)(2), sufficient funds in order to satisfy the net liquidating value of every futures and options customer. Each FCM is required to compute a calculation demonstrating its compliance with the segregation obligations on a daily basis, and is required to provide the CFTC and its DSRO with immediate notification if it is not in compliance with its segregation obligation. Should an FCM be under its minimum capital requirements under CFTC Regulation 1.17, it must cease doing business as an FCM and transfer customer accounts. In this instance, the segregation requirements make the quick transfer of customer funds and positions between FCMs possible, and, in that circumstance, the process is directed and monitored by the DSRO and the CFTC.</p> <p>CEA Section 4d(f) requires the segregation of cleared swaps pertaining to customers, as</p>	

	<p>well as associated collateral. Part 22 of the CFTC Regulations require cleared swaps customer collateral to be segregated from the FCM's own property, but permits the cleared swaps collateral of all FCM cleared swaps customers to be kept together pre-bankruptcy in one account. The value of the collateral attributable to each customer is tracked on a daily basis. This model is known as the Legally Segregated Operationally Commingled Model, or LSOC. Following an FCM's bankruptcy, where there is a shortfall in the cleared swaps customer account due to a cleared swaps customer loss that exceeds both the cleared swaps customer's collateral and the FCM's ability to pay, the DCO could only use the collateral value attributable to the cleared swaps customers whose portfolios of positions at the DCO suffered losses to meet each such customer's loss. Thus, all collateral attributable to cleared swaps customers whose portfolios of positions gained or were "flat" (neither gained nor lost), and the remaining collateral attributable to cleared swaps customers whose portfolios of positions lost, would be immediately available for transfer.</p>
9.	<p>Does the regulatory framework require market intermediaries to provide for an efficient and effective mechanism to address investor complaints?</p> <p>Yes. CFTC Regulation 166.5 sets forth the requirements that must be included in a customer account agreement with respect to dispute resolution procedures, including the use of arbitration procedures. Three fora exist for the resolution of disputes: civil court litigation, CFTC reparations proceedings, and arbitration conducted by an SRO or other private organization. An agreement to submit to arbitration must be voluntary and the intermediary must not require the customer to waive its right to seek reparations under Section 14 of the CEA and Part 12 of the CFTC's regulations.</p> <p>CFTC Regulation 23.504 requires SDs and MSPs to execute written trading relationship documentation with their counterparties, which must cover all terms governing the trading relationship, including dispute resolution. Additionally, CFTC Regulation 23.201(b)(3) requires that SDs and MSPs retain records of any complaint received, including the disposition of the complaint and the date the complaint was resolved.</p>
10.	<p>Does the regulatory framework require market intermediaries to identify and verify the client's identity using reliable, independent data, including persons who beneficially own or control securities?</p> <p>Yes. CFTC Regulation 23.402(b) requires each SD to implement policies and procedures to obtain and retain a record of the essential facts concerning each counterparty whose identity is known to the SD prior to the execution of a transaction that are necessary for conducting business with that counterparty, including facts required to comply with applicable laws and regulations; facts required to implement the SD's credit and operational risk management policies in connection with transactions entered into with such counterparty; and information regarding the authority of any person acting for such counterparty. CFTC Regulation 23.402(c) requires the SD or MSP to obtain a record showing the true name and address of each counterparty whose identity is known to the SD or MSP prior to the execution of the transaction, the principal occupation or business of such counterparty, and the name and address of any other person guaranteeing the performance of such counterparty and any person exercising any control with respect to</p>

	<p>the positions of the counterparty.</p> <p>CFTC Regulation 1.37 requires each FCM, RFED, IB and member of a contract market to keep a record in permanent form which shall show for each commodity interest account carried or introduced by it the true name and address of the person for whom such account is carried or introduced, the principal occupation or business of such person, and the name of any other person guaranteeing such account or exercising any trading control with respect to such account. For each commodity option account, the records kept by the intermediary must also show the name of the person who has solicited and is responsible for each customer's account or assign account numbers in such a manner to identify that person.</p>
11.	<p>Does the regulatory framework require market intermediaries to obtain and retain information from a client about their circumstances and investment objectives relevant to the services to be provided?</p>
	<p>Yes. CFTC Regulation 23.402(b) requires SDs to implement policies and procedures reasonably designed to obtain and retain a record of the essential facts concerning each counterparty whose identify is known to the SD prior to the execution of the transaction that are necessary for conducting business. CFTC Regulation 23.402(c) requires the SD or MSP to obtain a record showing the true name and address of each counterparty whose identify is known to the SD or MSP prior to the execution of the transaction, the principal occupation or business of such counterparty, and the name and address of any other person guaranteeing the performance of such counterparty and any person exercising any control with respect to the positions of the counterparty. CFTC Regulation 23.430 requires an SD or MSP to verify that a counterparty meets the eligibility standards for an eligible contract participant, as that term is defined by the CEA, before offering to enter into a swap with that counterparty.</p> <p>NFA Compliance Rule 2-30 requires the intermediary to know the customer's current estimated annual income and net worth and previous investment and futures trading experience.</p>
12.	<p>Does the regulatory framework require a market intermediary to "know its customer" before providing specific advice to a client?</p>
	<p>See response to questions 10 and 11, above.</p>
13.	<p>Does the regulatory framework require market intermediaries to keep records containing the information above for a reasonable number of years? Is the market intermediary required to maintain those books and records in such a way that allows the supervisor to be able to find all the relevant facts relating to a particular transaction?</p>
	<p>Yes. CEA Section 4s(g)(1) requires SDs and MSPs to maintain daily trading records and all related records (including records of related cash and forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls. CEA Section 4s(g)(3) requires that daily trading records for swaps be identifiable by counterparty, and CEA Section 4s(g)(4) specifies that SDs and MSPs maintain a "complete audit trail for conducting comprehensive and accurate trade reconstructions." CFTC Regulations in Part 23 require records to be maintained which include full and complete transaction and position information for all swap activities, including all documents on</p>

which trade information is originally recorded. Transaction records are required to be maintained in a manner that is identifiable and searchable by transaction and by counterparty. The CFTC regulations also require SDs and MSPs to keep basic business records, including, among other things, minutes from meetings of the entity's governing body, organizational charts, and audit documentation. Additionally, certain financial records, records of complaints against personnel, and marketing materials are required to be kept. Finally, SDs and MSPs are required to maintain records of information required to be submitted to a swap data repository (SDR) and reported on a real-time public basis. All records are required to be maintained for a period of five years following the termination, expiration or maturity of a swap, with the exception of voice records which must be retained for one year.

CFTC Regulation 1.31 requires all books and records required by the CEA and CFTC regulations to be kept for a period of five years and to be readily accessible during the first 2 years of the 5-year period. All books and records must be open to inspection by any representative of the CFTC or DOJ. The relevant recordkeeping provisions of several CFTC regulations, which cover records pertaining to segregated funds, account activity, financial condition, customer protection, and other matters, are summarized below.

CFTC Regulation 1.18 requires FCMs and IBs to prepare and keep current ledgers which show each transaction affecting asset, liability, income, expense and capital accounts consistent with the classifications specified on the Form 1-FR (or the FOCUS Report if a securities broker-dealer).

CFTC Regulation 1.27 requires each FCM that invests customer funds to keep a record showing the details of the investment, including the size and type of investment, the date of the investment, and any disposition made of the investment.

CFTC Regulation 1.32 requires an FCM to compute each day the customer funds in segregated accounts and the FCM's residual interest in those funds, and to keep a record of each such computation.

CFTC Regulation 1.33(a) requires that FCMs prepare a statement for each futures or options on futures customer which shows the open contracts acquired or pertinent options transactions and their prices, the net unrealized prices in all open contracts marked to the market, any customer funds carried with the FCM and a detailed accounting of all credits and charges to the customer's account for the month. If there is no activity in an account, an account statement need only be prepared every three months. Regulation 1.33 (b) requires that each FCM must furnish no later than the next business day: (1) a written confirmation of each futures transaction; or (2) a written confirmation of an options transaction containing the account identification number, a statement of the CFTC, premium or other applicable option charges, the strike price, the underlying futures contract or underlying physical, the final exercise date of the option and the date the transaction was executed.

CFTC Regulation 1.34 requires each FCM to prepare a monthly balance of all open positions which brings to the closing or settlement price all open futures and option positions.

	<p>CFTC Regulation 1.35(a) contains general recordkeeping requirements for FCMs and IBs with respect to futures, commodity options, and cash commodity transactions. FCMs and IBs must keep full, complete, and systematic records, together with all pertinent data and memoranda. Records to be kept include all orders (filled, unfilled, or cancelled), trading cards, signature cards, street books, journals, ledgers, cancelled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, data and memoranda which have been prepared in the course of the firm's business.</p> <p>CFTC Regulation 1.35(b) requires that the FCM maintain a financial ledger record for each customer account showing credits, debits, deposits, withdrawals or transfers, and charges or credits resulting from losses or gains on closed positions, along with a central activity record or journal showing all transactions made each day by the FCM, with trade details and the identity of the trader.</p> <p>CFTC Regulation 1.36(a) requires FCMs to maintain records of all securities and property received from customers to margin, purchase, guarantee, or secure a futures or exchange-traded option transaction. The records must show where the property is deposited and any other disposition of the property.</p> <p>CFTC Regulation 1.37(a) requires FCMs and IBs to keep a record of each account carried or introduced, the name and address of the person for whom such account is carried or introduced, and such person's principal occupation or business. The record must also show the name of any person guaranteeing the account or exercising any control over it.</p> <p>CFTC Regulation 1.37(b) requires each FCM carrying a futures or options omnibus account for another FCM, foreign broker, or other person to maintain a daily record of the positions in each such account.</p> <p>CFTC Regulation 1.40 imposes certain recordkeeping requirements relating to crop or market information or conditions that affect or tend to affect the price of any commodity.</p>
14.	<p>Does the regulatory framework require market intermediaries to provide to the client a written contract of engagement or account agreement or a written form of the general and specific conditions of doing business through the market intermediary?</p> <p>Yes. CFTC Regulation 23.402(e) requires an SD or MSP to provide its counterparty with information regarding its policies and procedures to prevent evasion of CFTC regulations, facts regarding the identity of the counterparty, and the SD's or MSP's ability to reasonably rely on its counterparty's representations.</p> <p>Further, transactions must be specifically authorized; customer information as discussed above must be obtained; risk disclosure must be provided, signed and retained; and monthly account statements and confirmations must be provided.</p> <p>CFTC Regulation 1.55 requires customer risk disclosures as well as FCM-specific public disclosures of firm-specific information as well.</p>
15.	<p>Does the regulatory framework require a market intermediary to disclose or make available information to its client so that the client can make an informed investment decision?</p>

Yes. CFTC Regulation 23.431 requires an SD or MSP to disclose to non-dealer counterparties, material information concerning the swap in a manner reasonably designed to allow the counterparty to assess the material risks and characteristics of the swap and the incentives and conflicts of interest that the SD or MSP may have in connection with the swap. This CFTC regulation also requires SDs to notify its counterparty, prior to entering into a swap with a non-SD or MSP counterparty that is not made available for trading on a DCM or SEF, that the counterparty can request and consult on the design of a scenario analysis to allow the counterparty to assess its potential exposure in connection with the swap. Upon such request, the SD must provide a scenario analysis, which is designed in consultation with the counterparty and done over a range of assumptions, including severe downside stress scenarios that would result in a significant loss. The SD must also disclose all material assumptions and explain the calculation methodologies used to perform any requested scenario analysis. In designing any requested scenario analysis, the SD must consider any relevant analyses that the SD undertakes for its own risk management purposes.

CFTC Regulation 33.7 requires FCMs and IBs, prior to opening a commodity option account, to furnish the customer with a written risk disclosure statement and to receive from the customer a signed acknowledgement that the risk disclosure statement has been received and understood.

CFTC Regulation 1.55 requires FCMs to provide customers with a written statement disclosing the risks of trading, as well as disclosures of firm specific information and the protection of customer funds. The topics covered in the risk disclosure statement include the potential loss of the total amount of funds deposited and losses beyond those amounts, the possibility of margin calls and the liquidation of positions if such calls are not met, the possibility that a position cannot be liquidated when desired, the possibility that "stop-loss" orders may not be executable, the acknowledgement that spread transactions may not be less risky than long or short trades, and the notice that the leverage in futures trading can result in large losses as well as large gains. The statement also urges the customer to consider his or her own suitability for trading and to study futures trading carefully before committing funds.



16.	Does the regulatory framework require market intermediaries to provide a client with statements of account, at least annually?
	<p>Yes. With respect to cleared swaps, CFTC Regulation 23.431(d) requires SDs and MSPs to notify non-SD or MSP counterparties of the counterparty's right to receive the daily mark from the appropriate DCO. For uncleared swaps, the SD or MSP must provide the non-SD or MSP counterparty with a daily mark which shall be the mid-market mark of the swap. The mid-market mark of the swap must not include amounts for profit, credit reserve, hedging, funding, liquidity, or any other costs or adjustments. The daily mark must be provided to the counterparty during the term of the swap as of the close of business or such other time as the parties agree in writing.</p> <p>CFTC Regulation 1.32 requires FCMs to compute as of the close of each business day, on a currency-by-currency basis, the total amount of customer funds on deposit in segregated accounts; the amount of customer funds required by the CEA and CFTC regulations to be on deposit in segregated accounts on behalf of the customer; and the amount of the FCM's residual interest in such customer funds. CFTC Regulation 1.33 requires FCMs to provide each customer with a monthly account statement regarding the details of transactions in its account, as well as charges and credits to the account. The FCM also must provide confirmation statements of each transaction by the next business day following the transaction.</p>
17.	Does the regulatory framework require market intermediaries to provide a client with information about any fees and commissions associated with the client's transactions?
	<p>CFTC Regulation 23.431(a) requires an SD or MSP to make disclosures of material information concerning a swap to its counterparty in every swap transaction, including the pre-trade mid-market mark of the swap.<sup>138</sup> Such disclosures provide important pricing information about the spread between the quote and mid-market mark that facilitates negotiations and balances historical information asymmetry regarding swap pricing. Additionally, where an SD or MSP transacts with a Special Entity<sup>139</sup> the SD or MSP must disclose all fees and compensation structures in a manner clearly understandable to the Special Entity.<sup>140</sup></p> <p>NFA Compliance Rule 2-4 provides that "Members and Associates shall observe high standards of commercial honor and just and equitable principles of trade in the conduct</p>

<sup>138</sup> The requirements of Regulation 23.431(a) do not apply to swaps that are transacted anonymously on a DCM or SEF.

<sup>139</sup> "Special Entity" is defined by CFTC Regulation 23.401(c) as a federal, state, city, county, municipality or other political subdivision of a state; an employee plan subject to Title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); any governmental plan, as defined in Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); any endowment, including an endowment that is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)); or any employee benefit plan defined in Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002), not otherwise defined as a Special Entity, that elects to be a Special Entity by notifying a swap dealer or major swap participant of its election prior to entering into a swap with the particular swap dealer or major swap participant.

<sup>140</sup> See *Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties*, 77 FR 9734, 9797 (Feb. 17, 2012).



	<p>of their commodity futures business." NFA Compliance Rule 2-4 requires that each FCM Member, or in the case of introduced accounts, the IB, to make available to its customers, prior to the commencement of trading, information concerning the costs associated with futures transactions.<sup>141</sup> If fees and charges associated with futures transactions are not determined on a per trade or round-turn trade basis, the Member must provide the customer with a complete written explanation of such fees and charges. The NFA recognizes that FCM and IB Members may employ various arrangements in assessing fees and charges associated with futures transactions to customers. Any such arrangement which is intended to or is likely to deceive customers is a violation of NFA Requirements and will subject the Member to disciplinary action.</p>
18.	<p>Does the regulatory framework require market intermediaries to act with due care and diligence in the best interests of its clients and their assets and in a way that helps preserve the integrity of the market?</p> <p>Yes. Part 23 of the CFTC's Regulations requires, among other things that SDs and MSPs communicate in a fair and balanced manner based on principles of fair dealing and good faith with respect to any communication between the SD or MSP and any counterparty,<sup>142</sup> and prohibit fraud, manipulation, and other abusive practices.<sup>143</sup> An SD acting as an advisor to a Special Entity has a duty to make a reasonable determination that any swap or trading strategy involving a swap recommended by the SD is in the best interests of the Special Entity.<sup>144</sup> The SD must also make reasonable efforts to obtain such information as is necessary to make a reasonable determination that any swap or trading strategy involving a swap recommended by the SD is in the best interest of the Special Entity.<sup>145</sup> NFA Compliance Rule 2-4 provides that Members and Associates shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business. NFA Compliance Rule 2-36(c) similarly provides that Forex Dealer Members and their Associates shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their forex business. <i>See also</i> response to Principle 12, Question 3(c).</p>
19.	<p>Can the regulator demonstrate that it has in place a supervision program, including internal processes that seek to monitor compliance by market intermediaries with these requirements?</p> <p>To help ensure compliance by registrants with operational conduct requirements, CFTC Regulation 166.3 requires each registrant, to "diligently supervise" the handling by its partners, officers, employees and agents of all activities relating to its business as a CFTC registrant. CFTC Regulation 1.52 prescribes the requirements of the DSRO examination program for compliance. The CFTC's Division of Swap Dealer and Intermediary Oversight examinations staff works with the DSROs to monitor how they carry out Regulation 1.52</p>

<sup>141</sup> NFA Bylaws define "futures" to include exchange-traded options. *See* NFA Compliance Rule 1-1(l).

<sup>142</sup> CFTC Regulation 23.433.

<sup>143</sup> CFTC Regulation 23.410.

<sup>144</sup> *See* CFTC Regulation 23.440(c)(1).

<sup>145</sup> *See* CFTC Regulation 23.440(c)(2).

examination functions, including performing desk reviews of FCM examination workpapers, as well as performing their own on-site FCM examinations for cause. DSRO examination cycles of FCMs must take place between nine and 15-month frequency.

<b>Principle 32</b>	<b>There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.</b>
<b>Key Questions</b>	
1.	Does the regulator have clear plans for dealing with the eventuality of a firm's failure, including a combination of activities to restrain conduct, to ensure assets are properly managed and to provide information to the market as necessary?
	<p>Yes. The CEA and CFTC regulations, in conjunction with the Bankruptcy Code, provide a clear framework for the CFTC and the insolvency officer ("trustee") to follow in managing the failure of an FCM.</p> <p><b>Early Warning Mechanisms.</b> As described above, all FCMs are monitored by a DSRO<sup>146</sup> for compliance with the CEA and CFTC regulations, including CFTC Regulation 1.17 (e.g., minimum capital requirement), as well as CEA Section 4d(a)(2) and CFTC Regulations 1.20-1.30 (e.g., treatment of customer property).</p> <p>Additionally, if an FCM is executing transactions on a DCM, then such FCM is required to clear such transactions through a DCO.<sup>147</sup> In order to clear such transactions, the FCM</p>

<sup>146</sup> As mentioned above, an SRO (i.e., a DCM or RFA) has the responsibility for ensuring that an FCM complies with the CEA and the CFTC Regulations. The term "DSRO" refers to the SRO that is primarily responsible for a specific FCM. If an FCM is a member of more than one SRO, all relevant SROs may decide among themselves which of them will be primarily responsible for that FCM, and that SRO will be appointed the DSRO for that FCM.

<sup>147</sup> See Section 5(b)(5) of the CEA (stating that, in order to become designated as a DCM, an entity must "establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into by or through the facilities of the contract market, including the clearance and settlement of the transactions with a derivatives clearing organization").

A DCO is a central counterparty that "interposes itself between counterparties" to commodity contracts, thereby "becoming the buyer to every seller and the seller to every buyer." See Section 1.1 of CPSS-IOSCO *Recommendations for Central Counterparties*, dated as of November 2004. A DCO guarantees that a member with net gains on its positions will receive related amounts, even if the DCO cannot collect such amounts from a member with net losses on its positions. Thus, a DCO is essential to managing systemic and counterparty risks in the event that a member fails.

To obtain and maintain its registration, a DCO must comply with 18 Core Principles established in Section 5b of the CEA and Part 39 of the CFTC Regulations.

The CFTC evaluates compliance with the Core Principles when reviewing DCO applications, and for DCOs that are already registered, the CFTC performs periodic reviews to assess their compliance with the Core Principles on an ongoing basis. Such reviews may focus on one or two Core Principles and assess the compliance of multiple DCOs with those particular Core Principles (horizontal review), or it may focus on a particular DCO and the compliance of that DCO with multiple Core Principles (vertical review). In evaluating DCO applications and performing Core Principle reviews, CFTC staff members consider not only documentary information, but also conduct on-site visits and independent analysis and testing, if appropriate. CFTC staff members draft confidential memoranda summarizing their conclusions with respect to DCO applications and Core Principle reviews, and the CFTC bases its actions on such memoranda.

generally must be a member of the DCO,<sup>148</sup> and must therefore comply with the rules of the DCO, especially those pertaining to payments and settlements. The FCM is monitored by the DCO for compliance with such rules.

Given the regulatory structure described above, the CFTC has a number of methods for ascertaining when an FCM may be experiencing financial distress. First, an FCM has affirmative responsibilities under CFTC regulations to notify the CFTC upon the occurrence of one of a number of events, any of which may indicate financial distress. For example, pursuant to CFTC Regulation 1.12:

- an FCM must provide the CFTC with notice within 24 hours, if such FCM knows or should know that its capital exceeds its minimum capital requirement, but only by an amount that is less than a certain percentage specified in CFTC Regulation 1.12,<sup>149</sup>
- an FCM must provide the CFTC with immediate notice, if such FCM knows or should know that its capital is less than the amount specified in its minimum capital requirement;<sup>150</sup>
- as mentioned above, an FCM must provide the CFTC with immediate notice, if such FCM determines that it has insufficient segregated property; and
- an FCM must provide the CFTC with immediate notice, if such FCM determines that a customer account is under margined by an amount that exceeds the adjusted net capital of such FCM.<sup>151</sup>

Second, the CFTC may receive information from a DSRO or a DCO that an FCM is either currently not fulfilling its financial obligations, or has a risk profile indicating that it may

<sup>148</sup> Most large FCMs are members of a DCO. If an FCM is not a member of a DCO ("Non-Clearing FCM"), it may become a customer of, and thereby clear transactions through, an FCM that is a member of a DCO ("Clearing FCM"). The Clearing FCM monitors the compliance of the Non-Clearing FCM with payment obligations. Pursuant to CFTC Regulation 1.12(f)(2), the Clearing FCM has an affirmative responsibility to notify the CFTC whenever it determines that it must immediately liquidate or transfer the positions of a Non-Clearing FCM, or limit the Non-Clearing FCM to trading for liquidation only, because the Non-Clearing FCM has failed to meet its payment obligations to the Clearing FCM.

<sup>149</sup> Pursuant to CFTC Regulation 1.10(b)(1)(i), the FCM must continue to provide, on a monthly basis, certain financial information to the CFTC, in a Form 1-FR (or an equivalent SEC report, if the FCM is also a broker-dealer). However, the CFTC may require, pursuant to CFTC Regulation 1.12, the FCM to provide interim financial information, to facilitate CFTC monitoring of such FCM.

<sup>150</sup> Pursuant to CFTC Regulation 1.12, the FCM must provide, within twenty-four (24) hours of such notice, certain financial information to the CFTC, in a Form 1-FR (or an equivalent SEC report, if the FCM is also a broker-dealer).

<sup>151</sup> *Id.*

shortly become unable to fulfill such obligations. Third, the Risk Surveillance Group (“RSG”) in DCR may identify such an FCM.<sup>152</sup>

**Management of Potential FCM Failure Pre-Bankruptcy.** If the CFTC ascertains, from the mechanisms described above, that an FCM may be experiencing financial distress, the CFTC will attempt to determine whether there is a significant likelihood that the FCM will fail.<sup>153</sup> The CFTC first gathers information from the DSRO, any other relevant SRO, and the DCO on the financial resources available to the FCM (including the liquidity of such resources). The CFTC then gathers information, from the same sources, on the potential causes of financial distress at the FCM (*e.g.*, extreme market volatility, or concentration of proprietary or customer positions opposite to the direction of the market), and on losses that the FCM has already sustained, or will likely sustain, from such causes. The CFTC finally considers the extent to which the FCM will be able to cover its current or future losses using its available financial resources.

If the CFTC determines that an FCM is likely to fail, then it will attempt:

- to cause the transfer of customer accounts. For example, pursuant to CFTC Regulation 1.17(a)(4), if an FCM holds less capital than the amount specified in its minimum capital requirement, then it generally must transfer all customer accounts and immediately cease conducting business as an FCM, until such time as the FCM is able to demonstrate compliance with its minimum capital requirement. The FCM itself or its DSRO would actually arrange the transfer of customer accounts. The role of the CFTC would be to facilitate such transfer as necessary (*e.g.*, grant relief from certain notice requirements applicable to such transfer under CFTC Regulation 1.65);
- to determine the effects that such failure would have on the counterparties of the FCM, as well as on the futures markets. In most instances, if the FCM is clearing transactions through a DCO, the failure would cause minimal disruption to counterparties and the futures markets. See the section below entitled “Proper Management of Systemic and Counterparty Risks (Whether Pre-Bankruptcy or After Bankruptcy).”

If the CFTC determines that an FCM is not likely to fail, then it may permit the FCM to continue operations without transferring customer accounts, despite the financial distress experienced by the FCM. For example, even if the FCM violates its minimum capital

<sup>152</sup> The RSG, as described further below, endeavors on a daily basis: (i) to identify any significant financial risks posed by positions in products that (A) an FCM clears through a DCO, and (B) fall within the jurisdiction of the CFTC; and (ii) to confirm that such financial risks are being appropriately managed.

<sup>153</sup> In many cases, CFTC staff will receive notice from an FCM for less serious reasons, such as when a clerical error causes the capital of an FCM to temporarily fall below the percentage specified in CFTC Regulation 1.12. Such notice will generally reveal that the error has been corrected.

requirement, the CFTC or the relevant DSRO has the discretion, pursuant to CFTC Regulation 1.17(a)(4), to allow the FCM a maximum of ten days to achieve compliance with such requirement, without transferring customer accounts and ceasing business, provided that the FCM immediately demonstrates to the CFTC or the DSRO its ability to achieve compliance within that time period. In determining whether the FCM has met its demonstration burden, the DSRO and the CFTC are in routine contact and work cooperatively.

**Management of FCM Bankruptcy.** If an FCM becomes the subject of bankruptcy proceedings, then Subchapter IV of Chapter 7 of the Bankruptcy Code ("Subchapter IV"), in conjunction with CFTC Regulation Part 190 ("Part 190"), would govern such proceedings. As described below, Subchapter IV and Part 190 set forth a clear structure for the liquidation of a commodity broker, including an FCM.

This structure promotes the prompt and effective transfer of customer positions and associated collateral to a financially solvent transferee FCM, or the prompt return of customer property.

*Restraints on Conduct.* Pursuant to CFTC Regulation 190.04(d)(2), the trustee appointed to administer the bankruptcy proceedings of an FCM is not permitted to purchase or sell new commodity contracts for the customers of such FCM, with the exceptions noted below. In general, CFTC Regulation 190.04(d)(2) presumes that an FCM subject to bankruptcy proceedings is insolvent and, therefore, that such FCM does not have sufficient capital to operate its business, which business may include supporting the credit of its customers or performing on other obligations. Thus, in restricting the conduct of the trustee, CFTC Regulation 190.04(d)(2) aims to minimize the risk of loss to customers of the FCM.

However, CFTC Regulation 190.04(d)(2) recognizes that, even where an FCM is insolvent, certain purchases or sales of new commodity contracts may be risk-reducing, and thus may prevent material erosion in value of open commodity contracts constituting customer assets. Therefore, CFTC Regulation 190.04(d)(2) permits the trustee to engage in such purchases or sales to achieve any of the following purposes: (i) to offset an open commodity contract; (ii) to transfer any transferable notice applicable to an open commodity contract; or (iii) to cover or partially cover, with the approval of the CFTC, inventory or commodity contracts of the FCM that cannot be immediately liquidated due to market conditions (including price limits).

Moreover, CFTC Regulation 190.04(d)(3) provides an exception, permitting the trustee, with the written permission of the Commission, to operate the business of the debtor in the ordinary course, including the purchase or sale of new commodity contracts on behalf of the customers of the debtor under appropriate circumstances, such as where a transfer has been arranged but has not yet been approved or completed.

### **Proper Management of Assets.**

**Pre-Petition Transfers.** If, pursuant to Regulation 1.17(a)(4), the FCM had transferred customer accounts before becoming subject to bankruptcy proceedings, then Section 764(b) of the Bankruptcy Code, in conjunction with CFTC Regulation 190.06(g)(1)(i), would protect such transfer from avoidance by the trustee. Specifically, Section 764(b) of the Bankruptcy Code prohibits a trustee from avoiding a transfer of customer positions in a commodity contract (and the collateral securing such positions), if the FCM made such transfer prior to seven calendar days after becoming subject to bankruptcy proceedings, and if the CFTC had approved such transfer by rule or order. In general, the CFTC has approved such transfer by promulgating CFTC Regulation 190.06(g)(1)(i), which prohibits a trustee from avoiding a transfer of customer accounts pursuant to CFTC Regulation 1.17(a)(4), unless the CFTC has specifically disapproved such transfer.

**Post-Petition Transfer.** An FCM may become subject to bankruptcy proceedings before it transfers customer accounts pursuant to CFTC Regulation 1.17(a)(4). In that case, CFTC Regulation 190.02(e) requires the trustee to immediately use its best efforts to transfer eligible customer accounts, as determined in accordance with CFTC Regulation 190.06(e) and (f). If the trustee makes such transfer prior to seven calendar days after the FCM becomes subject to bankruptcy proceedings, then Section 764(b) of the Bankruptcy Code, in conjunction with CFTC Regulation 190.06(g)(2), would protect such transfer from later attempts at avoidance.

**Distribution of Assets in Customer Accounts.** If the trustee determines, in accordance with CFTC Regulation 190.06(e) and (f), that certain customer accounts are not eligible for transfer, then the trustee must liquidate, in accordance with CFTC Regulation 190.02(f), the positions and accompanying collateral held in such accounts. As a practical matter, transfers of such accounts may be (and, in most cases have been) permitted, with the consent of the Commission.

With respect to customer collateral that is not transferred, the trustee must distribute the proceeds. Section 761(10) of the Bankruptcy Code characterizes such proceeds as "customer property." Section 766(h) of the Bankruptcy Code requires the trustee to distribute "customer property" to customers of the FCM, "in priority to all other claims," except claims attributed to the administration of such property. Therefore, under Section 766(h) of the Bankruptcy Code, "customer property" will be used to satisfy the claims held by customers of an FCM, until and unless this is fully accomplished. Accordingly, customer property is not available to satisfy the claims held by other creditors of such FCM, with the exception of claims attributed to the cost of administration of "customer property."

Section 766(h) of the Bankruptcy Code further requires the trustee to allocate "customer

property” among customers of an FCM *pro rata*, on the basis of “allowed net equity claims.” CFTC Regulation 190.08 specifies the manner in which the trustee must calculate such claims for each customer. *Pro rata* allocation provides a method for mutualizing any shortfalls in “customer property” in a fair and efficient manner that fosters prompt transfer of customer positions and associated collateral.

As described above, Section 4d(a)(2) of the CEA ensures the integrity of “customer property” by requiring that an FCM: (i) treat all collateral securing the positions of a customer, as well as all amounts accruing to such positions, as belonging to such customer; (ii) separately account for such collateral and amounts; and (iii) refrain from (A) commingling such collateral and amounts with proprietary funds, and (B) using the collateral and amounts belonging to one customer to margin or guarantee the transactions of, or to secure or extend credit to, another customer. As described above, the CFTC implemented Section 4d(a)(2) of the CEA by promulgating CFTC Regulations 1.20 to 1.30, which address the treatment of customer property, including investments of such property by an FCM.

**Provision of Information to the Market.** CFTC Regulation 190.02(a) requires: (i) an FCM filing a voluntary bankruptcy petition to notify the CFTC, as well as its DSRO, upon or before making such filing; and (ii) an FCM subject to an involuntary bankruptcy petition to notify the CFTC, as well as its DSRO, no later than one business day after the FCM receives information of such petition. Upon receiving such notification, both the CFTC and the DSRO will have the ability to provide information regarding such bankruptcy petition to the public, as necessary.

As a practical matter, FCM insolvencies receive prompt and widespread media coverage.

**Proper Management of Systemic and Counterparty Risks (Whether Pre-Bankruptcy or After Bankruptcy).** In general, if a DCO currently cannot collect payments from a member, or if a DCO believes that it will shortly be unable to collect such payments,<sup>154</sup> the DCO will declare the member to be in default. The rules of the DCO would govern the management of such default. Usually, such rules would permit: (i) the DCO to liquidate or transfer positions carried by the defaulting member; (ii) the DCO to access all property held in the proprietary accounts of the defaulting member; (iii) the DCO to access all property held in the customer account of the defaulting member, if the default of the member to the DCO resulted from the default of a customer to the member; and (iv) the DCO to access any amounts that the defaulting member had contributed to the guarantee fund. If the proceeds from (i) through (iv) do not cover all DCO losses, then the rules of the DCO may permit: (A) the DCO to access the amounts that non-defaulting members had contributed

<sup>154</sup> In general, if a DCO suspects that a member will shortly be unable to make scheduled payments, a DCO would request that such member deposit additional performance bond. If the member is unable to make such deposit, then the DCO would declare such member to be in default.



	to the guarantee fund; (B) the DCO to look to its own capital; and (C) the DCO to levy an assessment on all members.
	The U.S. Bankruptcy code provides a variety of "safe harbor" provisions by preventing the avoidance of margin payments and protecting transfers of customer positions and associated collateral from reversal. <sup>155</sup>
2.	Are there early warning systems or other mechanisms in place to give the regulator notice of a potential default by a market intermediary and time to address the problem and to take corrective actions?
	Yes. See response to Principle 32, Question 1.
3.	Does the regulator have the power to take appropriate actions: In particular, can it:
(a)	Restrict activities by the intermediary with a view to minimizing damage and loss to investors?
	Yes. See response to Principle 32, Question 1.
(b)	Require the intermediary to take specific actions, for example, moving client accounts to another intermediary?
	Yes. See response to Principle 32, Question 1.
(c)	Request appointment of a monitor, receiver, curator, or other administrator or, in the absence of such power, can the regulator apply to the relevant authorities to take possession or control of the assets held by the intermediary or by a third party on behalf of the intermediary?
	Yes. Pursuant to Section 6(c) of the CEA, the CFTC has the authority to request the appointment of a monitor, receiver, curator or other administrator, with respect to an FCM that the CFTC has reason to believe is violating or has violated any provision in the CEA and the CFTC Regulations.
(d)	Apply other available measures intended to minimize client, counterparty and systemic risk in the event of intermediary failure, such as client and settlement insurance schemes or guarantee funds?
	Yes. See response to Principle 32, Question 1. There is no insurance scheme or guarantee fund for customer recompense in the event of intermediary failure in the case of a shortfall in customer property, although there are significant regulatory requirements to keep customer property fully segregated to identify a shortfall quickly and transfer business, and provide priority claims to customer property under bankruptcy.

<sup>155</sup> See, e.g., 11 U.S.C. 362(b)(6), (7); 11 U.S.C. 556; 11 U.S.C. 764.

4.	Can the regulator demonstrate that it has the power and practical ability to take these actions against an intermediary?
	<p>To date, FCMs with customers trading exchange-traded futures and options on futures have been able to absorb some losses without causing any loss to their customers, and to wind down their business without disrupting the orderly functioning of markets. Even in a situation in which there appeared to be improper transfers of customer property resulting in a very significant deficiency in customer property developing over the course of a few days (MF Global), the FCM was immediately placed in Securities Investor Protection Corporation (SIPC) resolution when the deficiency in customer property was identified, which was the next business day. Customer accounts were transferred within hours and days, and market disruption was avoided. Although there was a shortfall in customer accounts, the bankruptcy process has enabled the satisfaction in full of all allowed net equity claims. Following the failure of MF Global, significant new enhancements have been made to the CFTC's customer protection regime, including new requirements for FCM policies and procedures, reporting, independent CFTC and DSRO verification of balances with depositories, daily segregation reporting, additional firm specific disclosure, and risk management program requirements.</p>
5.	Do the regulator's processes and procedures for addressing financial disruption include communication and cooperation with other regulators, both domestic and foreign, where appropriate, and is there evidence that contact arrangements are in place and that such cooperation occurs?
	<p>Yes. As a routine matter, the CFTC communicates and cooperates with other regulators, both domestic and foreign, on areas of mutual interest. With respect to potential financial disruption, the CFTC communicates and cooperates with the appropriate domestic and/or foreign regulator. The CFTC also formally interacts with other financial regulatory agencies through its participation in FSOC and staff working groups thereunder. If the CFTC wishes to share non-public information with another regulator, it does so pursuant to an MOU or a less formal arrangement in order to ensure that the requirements of Section 8(e) of the CEA are satisfied. <i>See also</i> responses to Principle 1, Question 2(d), and Principles 13-15.</p>

<b>PRINCIPLES RELATING TO SECONDARY MARKETS (33-37)</b>	
<b>Principle 33</b>	<b>The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.</b>
<b>Key Questions</b>	
<i>Exchanges or Trading Systems, Subject to Regulation</i>	
1.	Does the establishment of an exchange or trading system require authorization?
	<p>Yes. Any market that seeks to provide a trading facility to trade futures, options on futures or options on commodities must apply to the CFTC to become a DCM, unless some exemption or exclusion would apply. Section 4(a) of the CEA establishes the basis for requiring DCMs to register.</p> <p>Section 5h(a)(1) of the CEA requires that any multilateral trading facility that offers swaps must register with the CFTC as either a DCM or SEF. (SEF registration is only available for swaps trading facilities that limit participation to a sophisticated investor category known as ECPs.) CEA Section 5h, added to the CEA by the Dodd-Frank Act, and Part 37 of the CFTC's regulations establish a comprehensive regulatory framework, including registration, operation and compliance requirements for SEFs. To be registered and maintain registration, a SEF must comply with fifteen enumerated Core Principles and the requirements of the Part 37 rules.</p> <p>Section 4(b)(1) of the CEA authorizes the CFTC to adopt rules and regulations requiring FBOTs that provide the members of the FBOT or other participants located in the U.S. with direct access to the electronic trading and order matching system of the FBOT to register with the Commission. CFTC Regulation 48.3 makes it unlawful for an FBOT to permit direct access to its electronic trading and order matching system unless and until the CFTC has issued a valid and current Order of Registration to the FBOT. In order to become registered with the CFTC, an FBOT must demonstrate, among other things, that it and its clearing arrangements<sup>156</sup> satisfy the requirements set forth in CFTC Regulation 48.7.<sup>157</sup></p>
2.	Are there criteria for the authorization of exchange and trading system operators that:
	(a) Require analysis and authorization of the market by a competent authority?
	<p>Yes. The authorization of DCMs, SEFs and FBOTs requires analysis of their compliance with statutory and administrative requirements.</p> <p><b>DCMs. Statutory and administrative standards for DCM status.</b> The procedures and</p>

<sup>156</sup> Transactions executed on an exchange may be cleared by a clearing organization that is part of the same corporate entity as the exchange (e.g., CME Group); an affiliated entity of the exchange (e.g., transactions executed on ICE Futures U.S. are cleared by ICE Clear U.S.); or an entity that is unaffiliated with the exchange (e.g., Options Clearing Corporation).

<sup>157</sup> The FBOT must demonstrate, for example, that it satisfies certain requirements with respect to, among other things, its membership, its automated trading system, the terms and conditions of the contracts to be made available in the United States, clearing and settlement, its rules and enforcement thereof, and information sharing arrangements. CFTC Regulation 48.7. The requirements applicable to the FBOT's clearing organization may alternatively be met by demonstrating that the clearing organization is registered and in good standing with the CFTC as a DCO. CFTC Regulation 48.7. All contracts offered are required to be cleared and are subject to certain restrictions. See e.g., CFTC Regulation 48.7(c)(1)(ii).

requirements for designation as a DCM are set forth in Section 5 of the CEA and Part 38 of the CFTC's regulations. Appendix B to Part 38 provides guidance to applicants seeking to become designated as DCMs.

**Criteria for DCM Status and Ongoing DCM Requirements.** To be designated and maintain designation as a contract market, a board of trade must comply with 23 Core Principles as set forth in Section 5(d) of the CEA and Part 38 of the CFTC's regulations. Those Core Principles are:

1. Designation as contract market
2. Compliance with rules
3. Contracts not readily subject to manipulation
4. Prevention of market disruption
5. Position limits or accountability
6. Emergency authority
7. Availability of general information
8. Daily publication of trading information
9. Execution of transactions
10. Trade information
11. Financial integrity of contracts
12. Protection of markets and market participants
13. Disciplinary procedures
14. Dispute resolution
15. Governance fitness standards
16. Conflicts of interest
17. Composition of governing boards of contract markets
18. Recordkeeping
19. Antitrust considerations
20. System safeguards
21. Financial resources
22. Diversity of board of directors
23. Securities and Exchange Commission

**Application Process.** Applicants for designation must submit Form DCM and follow the application procedures set forth in CFTC Regulation 38.3. Form DCM is available in Appendix A to Part 38 of the CFTC's regulations. The application must include information sufficient to demonstrate compliance with the Core Principles specified in section 5(d) of the CEA. An application will not be considered to be materially complete unless the application has submitted, at a minimum, the exhibits required in Form DCM. The CFTC reviews new applications for designation as a contract market pursuant to the 180-day time frame and procedures specified in Section 6(a) of the CEA. The CFTC may approve or deny the application or, if deemed appropriate, designate the applicant as a contract market subject to conditions.

*See How to Become a Contract Market at:*

<http://www.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/dcmhowto>

**SEFs. Statutory and administrative standards for SEF status.** Criteria, procedures and requirements for registration as a SEF are set forth in Section 5(h) of the CEA and Part 37 of the CFTC's regulations. Appendices A and B to Part 37 provide specific information on these requirements and guidance. Additional Staff Guidance on SEFs can be found at <http://www.cftc.gov/LawRegulation/DoddFrankAct/GuidanceQandA/index.htm>.

**Registration requirements and ongoing compliance with Core Principles.** To be registered, and maintain registration as a SEF, a SEF must comply, on a continuing basis, with the following 15 Core Principles as set forth in Section 5h(f) of the CEA and Part 37 of the CFTC's regulations. Those Core Principles are:

1. Compliance with core principles
2. Compliance with rules
3. Swaps not readily subject to manipulation
4. Monitoring of trading and trade processing
5. Ability to obtain information
6. Position limits or accountability
7. Financial integrity of transactions
8. Emergency authority
9. Timely publication of trading information
10. Recordkeeping and reporting
11. Antitrust considerations
12. Conflicts of interest
13. Financial resources
14. System safeguards
15. Designation of chief compliance officer

**Application Process.** CFTC Regulation 37.3 sets forth the requirements and procedures for registration as a SEF. Form SEF is available in Appendix A to Part 37 of the CFTC's regulations. The application must include information sufficient to demonstrate compliance with the Core Principles specified in Section 5h of the CEA. An application will not be considered to be materially complete unless the application has submitted, at a minimum, the exhibits required in Form SEF. The CFTC will issue an order granting registration upon its determination that the applicant has demonstrated compliance with the CEA and regulations applicable to SEFs. If appropriate, the CFTC may issue an order granting registration subject to conditions.

**FBOTs.** Criteria, procedures and requirements for registration as an FBOT are set forth in Section 4(b) of the CEA, and Part 48 of the CFTC's regulations. In determining whether to register an FBOT, the CFTC evaluates whether the FBOT's home regulatory authority

<p>oversees the FBOT in a manner that is comparable to the CFTC's oversight of DCMs; specifically, whether the FBOT's regulator supports and enforces regulatory objectives that are substantially equivalent to those supported and enforced by the CFTC, such as prevention of market manipulation and customer and market abuse. Upon registration, the FBOT is not subject to Commission oversight.</p>
<p>(b) Seek evidence of operational or other competence of the operator of an exchange or trading system as a secondary market?</p>
<p>Yes for both DCMs and SEFs.</p> <p><b><u>DCMs</u></b></p> <p>The competency of system or market operators who apply for designation as a DCM are evaluated through the process whereby the system or operator demonstrates its capacity to operate in compliance with the Core Principles under CEA Section 5(d) and CFTC regulations in Part 38. Once a market receives designation, DCM Core Principle 15, Governance Fitness Standards, requires the DCM to establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other persons with direct access to the facility.</p> <p>The guidance in Appendix B to Part 38 of the CFTC Regulations provides, in part, that the minimum standards of fitness for persons who have member voting privileges, governing obligations or responsibilities, or who exercise disciplinary authority are the bases for refusal to register a person under Section 8a(2) of the CEA. In addition, persons with governing obligations or responsibilities, or who exercise disciplinary authority, should not have a significant history of serious disciplinary offenses such as those that would be disqualifying under CFTC Regulation 1.63.</p> <p><b><u>SEFs</u></b></p> <p>The competency of facilities that apply for registration as a SEF is demonstrated through a facility's capacity to operate in compliance with the Core Principles under CEA Section 5(f) and CFTC Regulations in Part 37. In particular, Core Principle 13 requires SEFs to have adequate "managerial resources" to discharge the SEF's responsibilities.</p> <p>The CFTC collects relevant information about the operational or other competence as part of the SEF application process. Form SEF requires, among other information, a "[b]rief account of the business experience of each officer and director over the last five (5) years," "a description of the personnel qualifications for each category of professional employees employed by the Applicant or the division, subdivision, or other separate entity within the Applicant," and "an analysis of staffing requirements necessary to carry out the operations of the Applicant as a swap execution facility and the name and qualifications of each key staff person."<sup>158</sup> Further, Form SEF requires an exhibit setting forth the "fitness standards for the Board of Directors and its composition."</p>

<sup>158</sup> Form SEF : <http://www.cftc.gov/ucm/groups/public/@industryoversight/documents/file/formsef.pdf>

- (c) Require the operator of an exchange or trading system that assumes principal, settlement, guarantee or performance risk to comply with prudential and other requirements designed to reduce the risk of non-completion of transactions (e.g., mandatory margin assessment and collection, capital or financial resources, member contributions, guaranty fund, credit or position limits)?

Yes. DCMs and SEFs are required to adopt and enforce rules for ensuring the financial integrity of transactions, which includes the clearance and settlement of transactions with a DCO that is registered with the Commission.

#### **DCMs**

DCM Core Principle 11 states that the DCM shall establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into on or through the facilities of the contract market (including the clearance and settlement of the transactions with a DCO that is registered with the Commission). The DCM is also required to establish and enforce rules to ensure the financial integrity of any FCM or IB, and the protection of customer funds. Specific requirements implementing DCM Core Principle 11 are contained in subpart L of Part 38 of the CFTC regulations.

Each DCM must adopt rules prescribing minimum financial and related reporting requirements for members who are registered FCMs or registered RFEDs. Each SRO must also establish and operate a supervisory program that includes written policies and procedures concerning the application of the supervisory program in the examination of its member registrants for the purpose of assessing whether each member registrant is in compliance with the applicable DCM and CFTC regulations governing minimum net capital and related financial requirements, the obligation to segregate customer funds, risk management requirements, financial reporting requirements, recordkeeping requirements, and sales practice and other compliance requirements. The supervisory program must address each of the elements contained in CFTC Regulation 1.52(c)(1). The DCM must also arrange for an examinations expert to evaluate the supervisory program at least every three years and report the results of the evaluation to the CFTC within 30 days of receiving the report.

DCMs are required to adopt rules that “provide for the exercise of emergency authority,” which includes, among other powers, the ability to suspend or curtail all trading in a contract under Core Principle 6. This emergency authority is intended to allow DCMs to “intervene as necessary to maintain markets with fair and orderly trading and to prevent or address manipulation or disruptive trading practices.”

DCMs must notify the CFTC promptly after exercising emergency authority to explain the reasons for the actions taken and submit a rule certification under Part 40 of the Commission’s regulations to explain actions taken to address the emergency. A DCM must also have rules that allow it to take such market action as may be directed by the CFTC.

<p><b><u>SEFs</u></b></p> <p>SEF Core Principle 7 states that the SEF shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the SEF, including the clearances and settlement of the swaps subject to the mandatory clearing requirement of section 2(h)(1) of the CEA.</p> <p>CFTC Regulation 37.701 requires transactions executed on or through the SEF that are required to be cleared under CEA Section 2(h)(1)(A) or that are voluntarily cleared by the counterparties to be cleared through a DCO. CFTC Regulation 37.702 requires a SEF to establish minimum financial standards for its members, which shall at a minimum require that members qualify as an ECP as defined by CEA Section 1a(18). CFTC Regulation 37.703 requires a SEF to monitor its members to ensure the members continue to qualify as ECPs.</p> <p>SEF Core Principle 8 requires a SEF to adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the CFTC, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap. See CFTC Regulation 37.800.</p>	<p>(d) Permit the regulator to impose ongoing conditions (as appropriate) on the operator of an authorized exchange or regulated trading system, such as the obligation to establish rules, policies and procedures to prevent fraudulent behaviour, treat all members or participants fairly, and have the capacity to carry out the market's and the competent authority's obligations?</p>
<p>Yes. A DCM applicant must demonstrate its capacity to operate in compliance with the Core Principles and CFTC regulations on an ongoing basis under CEA Section 5(d). The CFTC may approve a DCM application with conditions under CFTC Regulation 38.3.</p> <p>A facility applying for registration as a SEF must satisfactorily demonstrate its capacity to operate in compliance with the Core Principles and CFTC Regulations pursuant to CEA Section 5h. The CFTC may approve a SEF application with conditions under CFTC Regulation 37.3(b)(6).</p>	
<p><i>Supervision</i></p>	
<p>3. Does regulation require an assessment of:</p>	
<p>(a) The reliability of all arrangements made by the operator for the monitoring, surveillance and supervision of an exchange or trading system and its members or participants to ensure fairness, efficiency, transparency and investor protection, as well as compliance with securities legislation? The market's dispute resolution and appeal procedures or arrangements as appropriate, its technical systems standards and procedures related to operational failure, information on its record keeping system, reports of suspected breaches of law, arrangements for holding client funds and securities, if applicable, and information on how trades are cleared and settled?</p>	
<p>Yes.</p> <p><b><u>DCMs</u></b></p> <p>The CFTC's review of the capacity of the applicant to continuously meet the obligations of</p>	



CEA Section 5(d) requires a DCM to demonstrate that it can implement a trade practice monitoring system to monitor trading and supervise rule compliance by members; a market surveillance system to deter, detect and address manipulation; and a disciplinary process to address violations of exchange rules.

CFTC Regulation 38.3 requires an applicant to demonstrate that it complies with all Core Principles, which include providing the CFTC with a copy of all rules, technical manuals, other guides or instructions for users of, or participants in, the market; a description of the trading system, algorithms, security and access limitation procedures; and copies of any agreements that enable or empower the applicant to comply with the Core Principles.

Note: The CEA imposes statutory continuing obligations on DCMs, and the CFTC supervises the implementation of the exchange's mechanisms and programs to meet those obligations.

DCM Core Principle 2 requires a DCM to establish, monitor and enforce compliance with rules prohibiting abusive trading practices and to have the capacity to, among other things, detect, investigate and apply sanctions to any person that violates the rule of the DCM. Under CFTC Regulations 38.250 and 38.251, the applicant must demonstrate the means to monitor trading conduct, to supervise the system, and to address disorderly trading conditions.

DCM Core Principle 12 requires a DCM to establish and enforce rules to protect markets and market participants from abusive practices and to promote fair and equitable trading on the DCM. The CFTC's regulations require trade practice monitoring systems to monitor trading and supervise rule compliance by members; a market surveillance system to deter, detect and address manipulation; and a disciplinary process to address violations of exchange rules. CFTC Regulation 38.155(a) requires that a DCM establish and maintain sufficient compliance staff and resources to conduct audit trail reviews, trade practice surveillance, market surveillance, real-time market monitoring, and the ability to address unusual market or trading events and to complete any investigations in a timely manner.

DCM Core Principle 4 requires a DCM to have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including methods for conducting real-time monitoring of trading; and comprehensive and accurate trade reconstructions.

DCM Core Principle 10 requires the DCM to maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information to assist in the prevention of customer and market abuses and to provide evidence of any violations of the rules of the contract market.

In addition, CFTC Regulations 38.604-38.606 impose certain financial surveillance requirements on DCMs. CFTC Regulation 38.604 requires a DCM to monitor its members' compliance with the DCM's minimum financial standards, routinely receive and promptly review financial and related information from its members and continuously monitor the positions of its members and their customers. It also requires a DCM to have rules that prescribe minimum capital requirements for member FCMs and IBs. Moreover, a DCM is

required to continually survey the obligations of each FCM created by the positions of its customers; compare those obligations to the financial resources of the FCM, as appropriate; and take appropriate steps to use this information to protect customer funds. Under CFTC Regulation 38.605, a DCM's financial surveillance program for FCMs, RFEDs, and IBs must comply with the requirements of CFTC Regulation 1.52 to assess the compliance of such entities with applicable contract market rules and Commission regulations. Pursuant to CFTC Regulation 38.606, a DCM may comply with the requirements of CFTC Regulations 38.604 and 38.605 through the regulatory services of a RFA or a registered entity ("Regulatory Service Provider"), but must make sure that its Regulatory Service Provider has the capacity and resources necessary to provide timely and effective regulatory services, including adequate staff and appropriate surveillance systems. Regulatory services must be provided under a written agreement with the Regulatory Services Provider that specifically documents the services to be performed and the capacity and resources of the Regulatory Service Provider with respect to the services to be performed. However, at all times, the DCM remains responsible for compliance with its obligations under the CEA and CFTC regulations, and for the Regulatory Service Provider's performance on its behalf.

DCM Core Principle 18 requires the DCM to maintain records of all activities related to the business of the contract market in a form and manner acceptable to the CFTC for a period of 5 years.

DMO's Examinations Branch conducts regular reviews of each DCM's ongoing compliance with the Core Principles and related regulations through the self-regulatory programs operated by the exchange or its third-party self-regulatory service provider. Such reviews, known as RERs, include review of an exchange's ability to enforce its rules, prevent market manipulation and customer and market abuses, and ensure the recording and safe storage of trade information.

Periodic RERs normally examine a DCM's audit trail, trade practice surveillance, disciplinary, and dispute resolution programs for compliance with the relevant Core Principles, which include Core Principle 10, Trade Information, and Core Principle 18, Recordkeeping, with respect to audit trail programs; Core Principle 2, Compliance With Rules, and Core Principle 12, Protection of Markets and Market Participants, with respect to trade practice surveillance and disciplinary programs; and Core Principle 13, Disciplinary Procedures, with respect to dispute resolution programs.

Other periodic RERs normally examine a DCM's market surveillance program for compliance with Core Principle 4, Prevention of Market Disruption, and Core Principle 5, Position Limitations or Accountability. On some occasions, these two types of RERs may be combined in a single RER. The Compliance Section of the Examinations Branch can also conduct horizontal RERs of the compliance of multiple exchanges in regard to particular core principles.

In conducting an RER, DMO staff examine trading and compliance activities at the exchange in question over an extended time period selected by DMO, typically the twelve months immediately preceding the start of the review. Staff conducts extensive review of documents and systems used by the exchange in carrying out its self-regulatory responsibilities; interviews compliance officials and staff of the exchange; and prepares a

detailed written report of its findings. The RER report is typically made available to the public and posted on the Commission's website.<sup>159</sup>

With respect to clearing and settlement information, CFTC Regulation 38.601 requires transactions executed on or through a DCM to be cleared through a DCO that is registered with the Commission in accordance with Part 39 of the Commission's regulations.

### **SEFs**

SEF Core Principle 1 states that, to be registered and maintain registration as a SEF, the SEF must comply with the Core Principles and any other requirements the CFTC may impose. CFTC Regulation 37.5(b) provides that, upon the CFTC's request, a SEF shall file with the CFTC a written demonstration, containing supporting data, information, and documents that it is in compliance with one or more Core Principles or with its other obligations under the CEA or the CFTC's regulations as the CFTC specifies in its request.

SEF Core Principle 2 requires SEFs to establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to provide market participants with impartial access to the market and to capture information that may be used in establishing whether rule violations have occurred. CFTC Regulation 37.203 requires a SEF to establish a rule enforcement program for the monitoring, surveillance and supervision of the SEF and its market participants. CFTC Regulation 37.206 requires a SEF to have disciplinary procedures and sanctions in place to enforce trading, trade processing, and participation rules that will deter abuses.

SEF Core Principle 4 requires the SEF to monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive trade reconstructions. A SEF must also establish and enforce rules governing trading procedures and trade processing. CFTC Regulation 37.404(a) requires SEFs to have access to sufficient information to assess whether trading in swaps listed on its market, in the index or instrument used as a reference price, or in the underlying commodity for its listed swaps is being used to affect prices on its market.

With respect to clearing and settlement information, CFTC Regulation 37.701 requires transactions executed on or through a SEF that are required to be cleared under Section 2(h)(1)(A) of the CEA or that are voluntarily cleared by the counterparties to be cleared through a DCO.

*See also* response to Principle 33, Questions 2(a-b).

<sup>159</sup> See <http://www.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/dcmruleenf>

- (b) The mechanisms that must be in place to identify and address disorderly trading conditions and to deal with any contravening conduct that is detected, including details of procedures for trading halts, other trading limitations and assistance available to the regulator in circumstances of potential trading disruption on the system?

Yes.

### **DCMs**

DCM Core Principle 2 requires, among other things, a DCM to have rules prohibiting abusive trade practices on the contract market and to have the capacity to detect, investigate and apply sanctions to any person that violates the rules of the contract market. CFTC Regulation 38.152 requires the DCM to prohibit abusive trading practices on its markets by members and market participants. DCMs that permit intermediation must prohibit customer-related abuses including, but not limited to, trading ahead of customer orders, trading against customer orders, accommodation trading, and improper cross trading. Specific trading practices that must be prohibited by all DCMs include front-running, wash trading, prearranged trading, fraudulent trading, money passes, and any other trading practices that a designated contract market deems to be abusive. In addition, a DCM must prohibit any other manipulative or disruptive trading practices prohibited by the CEA or by CFTC regulations.

DCM Core Principle 4 requires the DCM to have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance and enforcement practices and procedures.

CFTC regulations implementing Core Principle 4 require a DCM to monitor and evaluate general market data in order to detect and prevent manipulative activity that would result in the failure of the market price to reflect the normal forces of supply and demand; demonstrate an effective program for conducting real-time monitoring of market conditions, price movements and volumes, in order to detect abnormalities and, when necessary, make a good-faith effort to resolve conditions that are, or threaten to be, disruptive to the market; and demonstrate the ability to comprehensively and accurately reconstruct daily trading activity for the purposes of detecting trading abuses and violations of exchange-set position limits, including those that may have occurred intraday. CFTC Regulation 38.255 requires a DCM to establish and maintain risk control mechanisms to prevent and reduce the potential risk of price distortions and market disruptions, including, but not limited to, market restrictions that pause or halt trading in market conditions prescribed by the DCM.

DCM Core Principle 6 requires the DCM, in consultation or cooperation with the CFTC to adopt rules to provide for the exercise of emergency authority, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any contract; to suspend or curtail trading in any contract; and to require market participants

in any contract to meet special margin requirements. CFTC guidance on DCM Core Principle 6 states that a DCM has the authority to intervene as necessary to maintain markets with fair and orderly trading and to prevent or address manipulation or disruptive trading practices, whether the need for intervention arises exclusively from the DCM's market or as a coordinated, cross-market intervention. To address perceived market threats, the DCM should have rules that allow it to take certain actions in the event of an emergency, including: imposing or modifying position limits, price limits, and intraday market restrictions; imposing special margin requirements; ordering the liquidation or transfer of open positions in any contract; ordering the fixing of a settlement price; extending or shortening the expiration date or the trading hours; suspending or curtailing trading in any contract; transferring customer contracts and the margin or altering any contract's settlement terms or conditions; and, where applicable, providing for the carrying out of such actions through its agreements with its third-party provider of clearing or regulatory services. In situations where a contract is fungible with a contract on another platform, emergency action to liquidate or transfer open interest must be as directed, or agreed to, by the CFTC or the CFTC's staff. The DCM has the authority to independently respond to emergencies in an effective and timely manner consistent with the nature of the emergency, as long as all such actions taken by the DCM are made in good faith to protect the integrity of the markets. The CFTC should be notified promptly of the DCM's exercise of emergency action, explaining how conflicts of interest were minimized, including the extent to which the DCM considered the effect of its emergency action on the underlying markets and on markets that are linked or referenced to the contract market and similar markets on other trading venues.

### **SEFs**

SEF Core Principles 2 and 4 require a SEF to, among other things, establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate and enforce those rules, and to monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

CFTC Regulation 37.203 requires SEFs to prohibit abusive trading practices on its markets by member and market participants. SEFs must maintain an automated trade surveillance system capable of detecting potential trade practice violations. The automated trade surveillance system must load and process daily orders and trades no later than 24 hours after the completion of the trading day. The automated trade surveillance system must have the capability to detect and flag specific trade execution patterns and trade anomalies; compute, retain, and compare trading statistics; compute trade gains, losses, and swap-equivalent positions; reconstruct the sequence of market activity; perform market analyses; and support system users to perform in-depth analyses and ad hoc queries of trade-related

data. A SEF must conduct real-time market monitoring of all trading activity on its system(s) or platform(s) to identify disorderly trading and any market or system anomalies. A SEF shall have the authority to adjust trade prices or cancel trades when necessary to mitigate market disrupting events caused by malfunctions in its system(s) or platform(s) or errors in orders submitted by members and market participants.

CFTC Regulation 37.401 requires a SEF to collect and evaluate data on its market participants' market activity on an ongoing basis in order to detect and prevent manipulation, price distortions, and, where possible, disruptions of the physical-delivery or cash-settlement process. A SEF must also monitor and evaluate general market data in order to detect and prevent manipulative activity that would result in the failure of the market price to reflect the normal forces of supply and demand. A SEF must demonstrate an effective program for conducting real-time monitoring of trading for the purpose of detecting and resolving abnormalities, and demonstrate the ability to comprehensively and accurately reconstruct daily trading activity for the purpose of detecting instances or threats of manipulation, price distortion, and disruptions.

CFTC Regulation 37.405 requires a SEF to establish and maintain risk control mechanisms to prevent and reduce the potential risk of market disruptions, including, but not limited to, market restrictions that pause or halt trading under market conditions prescribed by the SEF. Staff guidance in Appendix B provides that a SEF with a swap that is linked to, or a substitute for, other products, either on its market or on other trading venues, must, to the extent practicable, coordinate its risk controls with any similar controls placed on those other products. If a SEF's swap is based on the level of an equity index, such risk controls must, to the extent practicable, be coordinated with any similar controls placed on national securities exchanges.

SEF Core Principle 8 also provides for the exercise of emergency authority, in consultation or cooperation with the CFTC, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap. CFTC guidance to SEF Core Principle 8 provides that a SEF should have rules that authorize it to take certain actions in the event of an emergency. A SEF should have the authority to intervene as necessary to maintain markets with fair and orderly trading and to prevent or address manipulation or disruptive trading practices, whether the need for intervention arises exclusively from the SEF's market or as part of a coordinated, cross-market intervention. A SEF should have the flexibility and independence to address market emergencies in an effective and timely manner consistent with the nature of the emergency, as long as all such actions taken by the SEF are made in good faith to protect the integrity of the markets. However, the SEF should also have rules that allow it to take market actions as may be directed by the CFTC. Additionally, in situations where a swap is traded on more than one platform, emergency action to liquidate or transfer open interest shall be as directed, or agreed to, by the CFTC or the CFTC's staff. SEF rules should include procedures and guidelines for decision-making and implementation of

<p>emergency intervention that avoid conflicts of interest and include alternate lines of communication and approval procedures to address emergencies associated with real time events.</p>
<p>(c) Does the relevant market authority (i.e., the regulator or relevant SRO), the outsourcing market, and its auditors, have access to the books and records of service providers relating to an exchange's outsourced activities and the ability to obtain promptly, upon request, other information concerning activities that are relevant to regulatory oversight?</p>
<p>Yes. If a registered entity delegates a function to another registered entity, the CFTC would have regulatory authority to access the books and records of the registered entity to which the function "was delegated." If a registered entity outsources a function, the CFTC would maintain the authority to obtain relevant books and records from the registered entity. A DCM or SEF is also required to provide the CFTC with copies of any service provider agreements as an application exhibit.</p> <p>Certain third-party service arrangements are subject to additional Commission regulations. For example, although a DCM may comply with certain financial surveillance requirements through the regulatory services of a RFA or a registered entity, CFTC Regulation 38.606 requires the DCM to ensure that the regulatory service provider has the capacity and resources necessary to provide timely and effective regulatory services, including adequate staff and appropriate surveillance systems. The regulatory services must be provided under a written agreement with a regulatory services provider that specifically documents the services to be performed and the capacity and resources of the regulatory service provider with respect to the services to be performed. In any event, the DCM remains, at all times, responsible for compliance with its obligations under the CEA and Commission regulations, and for the regulatory service provider's performance on its behalf.</p>
<p><i>Securities and Market Participants?</i></p>
<p>4. With respect to securities and market participants:</p>
<p>(a) Is the regulator informed of the types of securities to be traded and does it approve the rules governing the admission of the securities to trading or listing?</p>
<p>Yes. Under Section 5c of the CEA and Part 40 of the Commission's regulations, DCMs and SEFs must inform the CFTC of the types of products to be traded on the DCM or SEF through either of two methods: (1) self-certification (CFTC Regulation 40.2); or (2) voluntary submission of new products for Commission review and approval (CFTC Regulation 40.3). CFTC prior approval is required for certain enumerated agricultural commodities.</p> <p>To meet its statutory mission of ensuring market integrity and customer protection with respect to products listed under self-certification procedures, the CFTC places greater reliance on its oversight authority, including market surveillance, RERs, reviews of contract terms, dialogue with the regulated entities, and enforcement actions. For contracts filed under self-certification procedures, the regulated entities are required to assume primary responsibility for ensuring that the contracts meet, on a continuing basis, the applicable statutory and regulatory requirements.</p>



### **Listing of Products for Trading by Self-Certification**

DCMs and SEFs must comply with the submission requirements of CFTC Regulation 40.2 prior to listing a product for trading that has not been approved for trading under CFTC Regulation 40.3 (the procedures for voluntary submission of new products for Commission review and approval).<sup>160</sup>

The Commission must receive the submission no later than the opening of business on the business day preceding the business day of the initial listing (or re-listing in the case of dormant contracts) of the product.<sup>161</sup>

The submission must include:

- A copy of the submission cover sheet, prepared in accordance with Appendix D of Part 40 of the Commission's regulations;
- A statement that the filing is made pursuant to CFTC Regulation 40.2;
- The text of the product's rules, including those relating to terms and conditions;
- The product's intended listing date;
- A certification by the DCM or SEF that the product to be listed complies with the CEA and CFTC regulations;
- A concise explanation and analysis of the product and its compliance with applicable provisions of the CEA, including Core Principles, and the CFTC's regulations. The explanation and analysis must either be accompanied by the documentation relied upon to establish the basis for compliance with applicable law, or incorporate information contained in such documentation, with appropriate citations to data sources.
- A certification by the DCM or SEF posted on its website that a notice of pending product certification is with the Commission.

If requested by CFTC Staff, the DCM or SEF must provide additional information or data that demonstrates that the contract meets, initially or on a continuing basis, the requirements of the CEA or CFTC regulations.

The CFTC may stay the listing of a contract during the pendency of CFTC proceedings for

<sup>160</sup> CFTC Regulation 40.2(d) includes specific procedures pursuant to which a DCM or SEF may list or facilitate trading in a swap or a number of swaps based upon an "excluded commodity," as defined in CEA Section 1a(19)(i), subject to certain exceptions, or an excluded commodity, as defined in CEA Section 1a(19)(ii)-(iv), if the DCM or SEF makes the certifications set forth in CFTC Regulation 40.2. However, the Commission may, in its discretion, require the DCM or SEF to withdraw such certification and submit each individual swap or certain individual swaps within the submission for Commission review pursuant to CFTC Regulations 40.2 or 40.3. The listing of securities futures products is subject to additional requirements and procedures.

<sup>161</sup> CFTC Regulation 40.1(a) defines "business day" as the period of time between 8:15 a.m. and 4:45 p.m. Eastern Standard Time or Eastern Daylight Savings Time, excluding Saturdays, Sundays, and Federal holidays in Washington, DC.



filing a false certification or during the pendency of a petition to alter or amend the contract terms and conditions.

### **Voluntary Submission of New Products for CFTC Review and Approval**

DCMs and SEFs may request that the CFTC approve a new or dormant product prior to listing the product for trading or, if a product was initially submitted under CFTC Regulation 40.3, subsequent to listing the new product for trading. Approval requests for contracts filed under self-certification procedures may be submitted concurrently with a self-certification filing or at any time thereafter, including after initial listing of the product.

A product request for approval must include:

- A copy of the submission cover sheet prepared in accordance with the instructions in Appendix D to Part 40 of the CFTC regulations;
- A copy of the rules that set forth the contract's terms and conditions;
- An explanation and analysis of the product and its compliance with applicable provisions of the CEA, including Core Principles, and the CFTC's regulations. This explanation and analysis must be either accompanied by the documentation relied upon to establish the basis for compliance with applicable law, or incorporate information contained in such documentation, with appropriate citations to data sources;
- A description of any agreements or contracts entered into with other parties that enable the DCM or SEF to carry out its responsibilities; and
- A certification that the DCM or SEF posted a notice of its request for CFTC approval of the new product and a copy of the submission on its website.

If requested by Commission staff, the DCM or SEF must provide additional evidence, information or data demonstrating that the contract meets, initially or on a continuing basis, the requirements of the CEA or other requirements for designation or registration under the CEA, Commission regulations or Commission policies. Such additional information must be submitted within the time frame set forth in the regulation.

All products submitted for CFTC approval are deemed approved by the CFTC 45 days after receipt by the CFTC or at the conclusion of an extended period,<sup>162</sup> unless the DCM or SEF is notified otherwise, if:

- The submission complies with the requirements of CFTC Regulation 40.3(a);
- The DCM or SEF, during the review period, does not amend the terms or conditions

<sup>162</sup> The CFTC may extend the 45-day review period for an additional 45 days if the product raises novel or complex issues that require additional time for review or is of major economic significance, if the DCM or SEF agrees in writing.

of the product or supplement the request for approval, except as requested by the CFTC or for non-substantive revisions. However, the CFTC, at any time during its review, may notify the DCM or SEF that it will not, or is unable to, approve the product because the submission lacks sufficient information for a determination as to whether the product violates, appears to violate, or potentially violates the CEA or Commission regulations.

See Procedures for Listing Products at:

<http://www.cftc.gov/industryoversight/contractsandproducts/listingprocedures.html>.

### **CFTC Review of DCM and SEF Rules**

Subject to certain exceptions, DCMs and SEFs, prior to implementing any new rule, must comply with the procedures for self-certification of rules set forth in Commission Regulation 40.6<sup>163</sup> or the procedures for voluntary submission of new rules for CFTC review and approval set forth in Commission Regulation 40.5.<sup>164</sup>

### **Self-Certification of Rules**

Commission Regulation 40.6 requires that the DCM or SEF submit the following to the Commission no later than the open of business on the business day that is ten business days prior to the implementation of the rule:

- A copy of the submission cover sheet prepared in accordance with the instructions in Appendix D to part 40 of CFTC regulations;
- The text of the rule;
- A certification by the registered entity that the rule complies with the CEA and Commission regulations;
- The date of the intended implementation;
- A concise explanation and analysis of the operation, purpose, and effect of the proposed rule and its compliance with applicable provisions of the CEA, including Core Principles, and Commission regulations;
- A certification that the registered entity posted notice of pending certification and a copy of its submission on its website;
- A brief explanation of any substantive opposing views expressed to the registered entity by governing board or committee members, members of the entity or market participants that were not incorporated into the rule or a statement that no

<sup>163</sup> The self-certification process is not available in certain instances.

<sup>164</sup> A DCO that has been designated by FSOC as systemically important is subject to the special certification procedures set forth in CFTC Regulation 40.10 for the submission of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by such DCO.

opposing views were expressed; and

- If requested by CFTC staff, any additional evidence, information or data that may be beneficial to the CFTC in conducting a due diligence assessment of the filing and the registered entity's compliance with the CEA or Commission regulations.

The CFTC has ten business days to review the new rule before the new rule is deemed certified and can be effective, unless the CFTC notifies the DCM and SEF during the ten business day review period that it intends to stay the certification on the grounds that the rule presents novel or complex issues that require additional time to analyze, is accompanied by an inadequate explanation, or is potentially inconsistent with the CEA or CFTC regulations. The CFTC has an additional 90 days to conduct its extended review during which period it provides a 30-day public comment period. A stayed rule becomes effective after an additional 90 days, unless the CFTC withdraws the stay prior to that time or the CFTC notifies the registered entity that it objects to the proposed certification on the grounds that the rule is inconsistent with the CEA or Commission regulations.

### **Voluntary Submission of Rules for CFTC Review and Approval**

A DCM or SEF may request that the CFTC approve a new rule prior to implementation thereof or, if the rule was initially submitted under CFTC Regulations 40.2 or 40.6, subsequent to the implementation of the rule. A request for approval must include all of the materials required for self-certification of rules, as well as:

- A description of any action taken or anticipated to be taken by the DCM or SEF or its respective governing board or by any committee thereof and citations to the rules of the registered entity that authorize the adoption of the proposed rule;
- A description of the anticipated benefits to market participants or others, any potential anti-competitive effects on market participants or others, and how the rule fits into the registered entity's framework of self-regulation;
- Any additional information that may be beneficial to the CFTC in analyzing the new rule and, if the proposed rule affects the application of any other rule of the DCM or SEF the text of any such rule and a description of the anticipated effect; and
- Identification of any CFTC regulation that the Commission may need to amend or sections of the CEA or Commission regulations that the CFTC may need to interpret, in order to approve the new rule and a reasoned analysis supporting the amendment or interpretation.

At any time during the Commission's review of the proposed rule, the Commission may notify the DCM or SEF that it will not, or is unable to, approve the new rule. Otherwise, all

rules submitted for CFTC approval are deemed approved by the Commission 45 days after receipt or at the conclusion of any extended period,<sup>165</sup> if the rule complies with the submission requirements, and the DCM or SEF does not amend the proposed rule or supplement its submission (except as requested by the Commission and other than for non-substantive revisions) during the pendency of the review period.

### **Made Available to Trade Determinations**

Section 2(h)(8) of the CEA requires swaps subject to the clearing requirement to be traded on a DCM or SEF, unless no DCM or SEF “makes the swap available to trade.” CFTC Regulations 37.10 and 38.12 specify the process for a SEF and DCM, respectively, to make a swap available to trade. The SEF or DCM must demonstrate that it lists or offers that swap for trading on its trading system or platform. In considering whether to make a swap available to trade, the SEF or DCM must consider one or more of the following factors: whether there are ready and willing buyers and sellers; the frequency or size of transactions; trading volume; number and types of market participants; the bid/ask spread; or the usual number of resting form or indicative bids and offers. Upon a determination that a swap is available to trade on any SEF or DCM, that swap is subject to the Section 2(h)(8) trade execution requirement, which means that the swap may only be traded on a DCM or SEF in accordance with certain execution methods.

### **Rules of Enumerated Agricultural Commodities<sup>166</sup> required to be submitted for prior CFTC Approval**

Registered entities must submit to the CFTC, and receive CFTC approval prior to implementation, all new rules and rule amendments that materially change the terms and conditions of contracts on commodities enumerated in CEA Section 1a(9) and that will apply to contracts with open interest.

Such new rules and rule amendments cannot be implemented pursuant to the certification procedures of CFTC Regulation 40.6, but must be submitted to the CFTC for approval under CFTC Regulations 40.4 and 40.5, or for a determination as to whether such rules or rule amendments materially change the terms and conditions of the affected contracts pursuant

<sup>165</sup> The CFTC may extend the review period for an additional 45 days, if the proposed rule raises novel or complex issues that requires additional time for review or is of major economic significance, the submission is incomplete, or the requestor does not respond completely to Commission questions in a timely manner.

<sup>166</sup> The agricultural commodities listed here are commonly referred to as the enumerated commodities of the CEA: wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain, sorghums, mill feeds, butter, eggs, *Solanum tuberosum* (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed, cottonseed meal, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice.

to CFTC Regulation 40.4(a).

If the CFTC determines that a new rule or rule amendment is consistent with the requirements of the CEA and CFTC regulations, the new rule or rule amendment is deemed approved 45 days after CFTC receipt of the approval request, or at the conclusion of any extended review period, as provided under CFTC Regulations 40.5(b) and (c). If the CFTC determines that it will not, or is unable to, approve the new rule or rule amendment, it will provide a Notice of Non-Approval to the registered entity, as provided under CFTC Regulation 40.5(d). In this Notice of Non-Approval, the CFTC will briefly specify the nature of the issues identified and the specific provision of the CEA or CFTC regulations that the new rules or rule amendments violate.

A registered entity receiving a Notice of Non-Approval may not certify the same, or substantially the same, new rules or rule amendments under the certification procedures of CFTC Regulation 40.6. However, the registered entity may submit revised new rules or rule amendments for approval under these same 40.4 and 40.5 procedures.

(b) Where applicable, does the regulator or the market take product design and trading conditions into account in order to admit a product for trading?

Yes. Express authorization prior to trading is required only for contracts based on enumerated agricultural commodities. *See also* Principle 33, Question 4(a).

(c) Does the regulatory framework provide for fair access to the exchange or trading system through oversight of the related rules for participation?

Yes for both a DCM and a SEF.

#### **DCMs**

DCM Core Principle 2 requires DCMs to establish, monitor, and enforce compliance with the rules of the DCM including access requirements. CFTC Regulation 38.151(b) requires DCMs to provide its members, persons with trading privileges, and independent software vendors ("ISVs") with impartial access to its markets and services, including access criteria that are impartial, transparent, and applied in a non-discriminatory manner. CFTC Regulation 38.151(b)(2) requires that the DCM provide comparable fee structures for members, persons with trading privileges, and ISVs receiving equal access to, or services from, the DCM. CFTC Regulation 38.151(c) requires a DCM to establish and impartially enforce rules governing any decision by the DCM to deny, suspend, or permanently bar a member's or a person with trading privileges access to the contract market. Accordingly, any decision by a DCM to deny, suspend, or permanently bar a member's or person with trading privileges access to the DCM must be impartial and applied in a non-discriminatory manner.

#### **SEFs**

SEF Core Principle 2 requires SEFs to provide market participants with impartial access to the SEF. CFTC Regulation 37.202 requires SEFs to provide any eligible contract participant and any independent software vendor with impartial access to its market(s) and market services, including any indicative quote screens or any similar pricing data displays. The SEF has to

have impartial criteria governing access, comparable fee structures and impartial enforcement of rules for limiting access.	
<i>Fairness of Order Execution Procedures</i>	
5.	With respect to order execution procedures:
(a)	Are order routing procedures clearly disclosed to regulators and to market participants, applied fairly and not inconsistent with relevant securities regulation (e.g., requirements with respect to precedence of client orders and prohibition of front-running or trading ahead of customers)?
<p>Yes for both a DCM and a SEF.</p> <p><b><u>DCMs</u></b></p> <p>The statutory duties and CFTC regulations regarding the requirement to offer fair and impartial access are discussed in the response to Principle 33, Question 5(c), below, and the requirement to apply execution rules fairly to all participants is discussed in response to Principle 33, Question 5(b), below. These requirements operate to ensure that a system's order routing procedures are clearly disclosed to the regulator and to market participants, are applied fairly and are not inconsistent with relevant securities regulations. DCM Core Principle 2 also specifically prohibits front-running, wash trading, some forms of pre-arranged trading, fraudulent trading, money passes, and any other trading practices that a DCM deems to be abusive. <i>See also</i> DCM Core Principle 12 which requires DCMs to promote fair and equitable trading on the contract market. CFTC Regulation 38.650(b) requires DCMs to establish and enforce rules to promote fair and equitable trading on the contract market. DCM applicants must attach as Exhibit L to Form DCM a description of the manner in which the applicant is able to comply with each Core Principle.</p> <p><b><u>SEFs</u></b></p> <p>The statutory duties and CFTC regulations regarding the requirement to offer impartial access are discussed in the response to Principle 33, Question 5(c) below, and the requirement to apply execution rules fairly to all participants is discussed in response to Principle 33, Question 5(b) below. These requirements operate to ensure that a system's order routing procedures are clearly disclosed to the regulator and to market participants, are applied fairly and are not inconsistent with relevant securities regulations. SEF Core Principle 2 requires a SEF to establish rules governing the operation of the SEF including rules specifying trading procedures to be followed by members and market participants when entering and executing orders traded or posted on the SEF. SEFs must also establish and impartially enforce compliance with the rules of the SEF, including, the terms and conditions of any swaps traded or processed on or through the SEF; access to the SEF; trade practice rules; audit trail requirements; disciplinary rules; and mandatory trading requirements. SEF applicants must attach as Exhibit L to Form SEF a description of the manner in which the applicant is able to comply with each Core Principle.</p>	
(b)	Are execution rules disclosed to the regulator and to market participants, and consistently applied to all participants?
<p>Yes for DCMs and SEFs.</p> <p><b><u>DCMs</u></b></p>	

Boards of trade applying for contract market designation must meet statutory requirements that execution rules are disclosed to the regulator and to market participants, and are fairly applied to all participants. DCM Core Principle 7 requires a DCM to make available to market authorities, market participants, and the public information on the rules, regulations, and mechanisms for executing transactions on or through the DCM. DCM Core Principle 9 requires DCMs to provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the DCM. CFTC Regulation 1.38, which applies to commodity futures and options requires competitive execution. Note: CFTC Regulation 1.38 permits certain noncompetitive trades that are executed pursuant to rules that have been approved by the CFTC. Exhibit L to Form DCM requires DCM applicants to describe the manner in which the applicant is able to comply with each Core Principle. DCM rulebooks are also required to be publicly available.

#### **SEFs**

Applicants for registration as a SEF must meet statutory requirements that execution rules are disclosed to the regulator and to market participants, and are fairly applied to all participants. SEF rulebooks are required to be publicly available. A SEF applicant must also explain the operation of its trading system or platform and the manner by which the trade functionality requirement of CFTC Regulation 37.3(a)(2) is satisfied.

(c) Where applicable, does the regulator review the trade matching or execution algorithm of automated trading systems for fairness?

Yes for DCMs and SEFs.

#### **DCMs**

Applicants for designation as a DCM must meet statutory requirements that trade matching or execution algorithms are disclosed to the regulator and to market participants, and are fairly applied to all participants. The DCM applicant must attach Exhibit Q to its application on Form DCM, which requires a description of the applicant's trading system and trade matching algorithm and examples of how that algorithm works in various trading scenarios involving various types of orders.

#### **SEFs**

Applicants for registration as a SEF must meet statutory requirements that trade matching or execution algorithms are disclosed to the regulator and to market participants, and are fairly applied to all participants. For trading systems or platforms that enable market participants to engage in transactions through an order book, the SEF applicant must attach as Exhibit Q to its Form SEF an explanation of the trading matching algorithm, if applicable, and examples of how that algorithm works in various trading scenarios involving various types of orders. For trading systems or platforms that enable market participants to engage in transactions through a request for quote system, the SEF applicant must attach as Exhibit Q to Form SEF an explanation of how a requester may transact on resting bids or offers along with the responsive orders.

(d) Do all system users have equal opportunity to connect and maintain the connection to the electronic trading system and are differences in order execution response times disclosed by the system operator?
Yes. See Principle 33, Question 4(c).
(e) Are there in place effective systems and controls reasonably designed to enable the management of risk with regard to fair and orderly trading including, in particular, automated pre-trade controls that enable intermediaries to implement appropriate risk limits?
<p>Yes for DCMs and SEFs.</p> <p><b><u>DCMs</u></b></p> <p>CFTC Regulation 38.255 requires DCMs to establish and maintain risk control mechanisms to prevent and reduce the potential risk of price distortions and market disruptions, including, but not limited to, market restrictions that pause or halt trading in market conditions prescribed by the DCM. CFTC Regulation 38.607 requires DCMs that permit direct electronic access by customers<sup>167</sup> to have in place effective systems and controls reasonably designed to facilitate the FCM's management of financial risk, such as automated pre-trade controls that enable member FCMs to implement appropriate financial risk limits. A DCM must implement and enforce rules requiring the member FCMs to use the provided systems and controls.</p> <p><b><u>SEFs</u></b></p> <p>SEF Core Principle 4 and CFTC Regulation 37.405 require SEFs to establish and maintain risk control mechanisms to prevent and reduce the potential risk of market disruptions, including, but not limited to, market restrictions that pause or halt trading under market conditions prescribed by the SEF.</p>
<i>Operational Information</i>
6. With respect to trading information:
(a) Do similarly situated market participants have equitable access to market rules and operating procedures?
<p>Yes for DCMs and SEFs.</p> <p><b><u>DCMs</u></b></p> <p>Section 5(d) of the CEA ensures that that all market rules and operating procedures are available to market participants. DCM Core Principle 7 requires DCMs to make available to market authorities, market participants, and the public information concerning the terms and conditions of the contracts of the contract market; and the mechanisms for executing transactions on or through the facilities of the contract market. CFTC Regulation 38.400 requires DCMs to make available to market authorities, market participants and the public</p>

<sup>167</sup> CFTC Regulation 38.607 describes "direct electronic access by customers" as being situations where customers of FCMs are permitted to enter orders directly into a DCM's trade matching system for execution.



<p>accurate information concerning the terms and conditions of the DCM's contracts and the rules, regulations and mechanisms for executing transactions on or through the facilities of the DCM. The DCM must also make available to market authorities, market participants, and the public accurate information concerning the rules and specifications describing the operation of the DCM's electronic matching platform or trade execution facility.</p> <p><b><u>SEFs</u></b></p> <p>Under Commission Regulation 37.202, a SEF is required to provide any ECP and any independent software vendor with impartial access to its markets and market services, including any indicative quote screens or any similar pricing data displays, and the facility must have criteria governing such access that are impartial, transparent and applied in a non-discriminatory manner. The SEF must have comparable fee structures for ECPs and independent software vendors receiving comparable access to, or services from, the SEF.</p>	<p>(b) Are adequate records (i.e., audit trails) available to reconstruct trading activity within a reasonable time?</p>
<p>Yes.</p> <p><b><u>DCMs</u></b></p> <p>DCM Core Principle 10 requires DCMs to maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information: (a) to assist in the prevention of customer and market abuses; and (b) to provide evidence of any violations of the rules of the contract market.</p> <p>CFTC Regulation 38.551 requires DCMs to capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses. Such data must be sufficient to reconstruct all transactions within a reasonable period of time and to provide evidence of any violations of the rules of the DCM. An acceptable audit trail must also permit the DCM to track a customer order from the time of receipt through fill, allocation, or other disposition, and must include both order and trade data. CFTC Regulation 38.256 requires DCMs to have the ability to comprehensively and accurately reconstruct all trading on its trading facility.</p> <p><b><u>SEFs</u></b></p> <p>SEF Core Principle 10 requires SEFs to maintain records of all activities relating to the business of the facility, including a complete audit trail in a form and manner acceptable to the CFTC for a period of 5 years. CFTC Regulation 37.406 requires SEFs to have the ability to comprehensively and accurately reconstruct all trading on its facility.</p>	<p>(c) Is the system capable of disclosing the types of information that it is designed to make available, and, conversely, of providing safeguards to preserve the confidentiality of other information, the disclosure of which is not intended?</p>
<p>Yes. CFTC Regulation 16.01 requires SEFs and DCMs to publish market data on futures, swaps, and options regarding trading volume, open contracts prices, and critical dates to the</p>	

public either through the news media or through the SEF or DCM's rulebook. CFTC Regulation 16.02 requires SEFs and DCMs to report to the CFTC on a daily basis transaction-level trade data and related order information for each futures or options contract. Upon request, such information shall be accompanied by data that identifies or facilitates the identification of each trader for each transaction or order included in a submitted trade and supporting data report if the reporting market maintains such data.

DCMs and SEFs must report swap transaction data to a SDR as soon as technologically practicable after execution of a transaction under CFTC regulations in Parts 43 and 45. The SDR must publicly disseminate certain swap pricing data reported pursuant to CFTC regulation in Part 43 as soon as technologically practicable after it is received from the DCM or SEF. The CFTC has direct access to the full scope of swap data reported to SDRs pursuant to Parts 43 and 45 of the CFTC Regulations. Besides Part 43 pricing data, however, this swap data is not made publicly available.

### **DCMs**

Fair and equitable trading on a DCM, among other things, includes providing to market participants, on a fair, equitable and timely basis, information regarding prices, bids and offers, as applicable to the market. A DCM applicant must satisfactorily demonstrate its capacity to operate in compliance with CFTC Regulation 38.401 and DCM Core Principles 7, 8, and 10. CFTC Regulation 38.401 requires the DCM to provide the public with access to the rule, regulations, and contract specifications of the DCM. DCM Core Principle 7 ensures disclosure of general information to market authorities, market participants, and the public. DCM Core Principle 8 requires the daily publication of trade information. DCM Core Principle 10 requires the creation of an audit trail. An acceptable audit trail will include a safe storage capability providing for the storing of data included in the transaction history in a manner that protects the data from unauthorized alteration, as well as from accidental erasure or other loss.

CFTC Regulation 38.401(c)(2) states that to the extent that a DCM requests confidential treatment of any information filed with the Secretary of the CFTC, the DCM must post on its website the public version of such filing or submission.

In addition, CFTC Regulation 38.7 prohibits a DCM from using for business or marketing purposes proprietary or personal information that it collects from market participants unless the market participant clearly consents to the use of its information in such a manner. The CFTC notes that the requirements of CFTC Regulation 38.7 are in line with similar rules intended to provide privacy protections to certain consumer information under the Fair Credit Reporting Act. See CFTC Regulations in Part 162.

DCM Core Principle 10 requires a DCM to maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information: (a) to assist in the prevention of

customer and market abuses; and (b) to provide evidence of any violations of the rules of the contract market. CFTC Regulation 38.552(d) requires safe storage capability: A DCM's audit trail program must include the capability to safely store all audit trail data retained in its transaction history database. Such safe storage capability must include the capability to store all data in the database in a manner that protects it from unauthorized alteration, as well as from accidental erasure or other loss. Data must be retained in accordance with the recordkeeping requirements of Core Principle 18.

### **SEFs**

Fair and equitable trading on a SEF, among other things, includes providing to market participants, on a fair, equitable and timely basis, information regarding prices, bids and offers, as applicable to the market. A SEF applicant must satisfactorily demonstrate its capacity to operate in compliance with SEF Core Principle 9 and CFTC Regulation 37.901. SEF Core Principle 9 requires the SEF to make public timely information on the price, trading volume and other trading data on swaps. The SEF must have the capacity to electronically capture and transmit trade information with respect to transactions executed on the SEF.

As noted above, CFTC Regulation 37.901 requires SEFs to report the data required under CFTC Regulations in Part 43 (real-time public reporting) and Part 45 (swap data recordkeeping and reporting requirements).

CFTC Regulation 37.7 prohibits a SEF from using for business or marketing purposes any proprietary data or personal information the SEF collects or receives, from or on behalf of any person, for the purpose of fulfilling its regulatory obligations; provided, however, that a SEF may use such data or information for business or marketing purposes if the person from whom it collects or receives such data or information clearly consents to the SEF's use of such data or information in such manner. A SEF may not condition access to its market(s) or market services on a person's consent to the SEF's use of proprietary data or personal information for business or marketing purposes. A SEF, where necessary for regulatory purposes, may share such data or information with one or more swap execution facilities or designated contract markets registered with the CFTC.

(d) Does the market provide member intermediaries with access to relevant pre-and post-trade information (on a real time basis) to enable these intermediaries to implement appropriate monitoring and risk management controls?

See response to Principle 35, Questions (1) (a) and (b).

**Principle 34** There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.

**Key Questions**

1. Does the regulatory system:

- (a) Include a program whereby the regulator or an SRO, subject to oversight by the regulator, monitors day-to-day trading activity on the exchange or trading system (through a market surveillance program), monitors conduct of market intermediaries (through examinations of business operations) and collects and analyzes the information gathered through these activities?

Yes. The CFTC, DCMs, DCOs and SEFs conduct market surveillance.<sup>168</sup>

The CFTC conducts a comprehensive market integrity program that includes a system of collecting information on market participants as part of its market surveillance and financial risk surveillance programs. The CFTC's oversight programs are supported by the CFTC's enforcement program as necessary. The market surveillance program is intended to preserve the economic functions of the U.S. derivatives markets under its jurisdiction by monitoring trading activity, to detect and prevent manipulation or abusive practices, to keep the CFTC informed of significant market developments, to enforce CFTC and exchange speculative position limits, and to ensure compliance with CFTC reporting requirements. In conducting market surveillance, CFTC staff has a close working relationship with the exchanges' market surveillance staff.

The Commission monitors trading and positions of market participants on an on-going basis. Commission staff screen for potential market manipulations and disruptive trading practices, as well as trade practice violations. The staff also monitors exchange transactional data routinely to detect violations such as wash trading, prearranged trading, accommodation trading, customer fraud, fictitious sales, price distortion and manipulation, and trading ahead. Such market surveillance is dependent on the ability to acquire large volumes of data and the development of sophisticated analytics to identify trends and/or outlying events that warrant further investigation. The combination of analysis of available data sets and Special Call authority leads to an understanding of benign market activities and possible violations of the CEA. In addition, the Commission conducts risk and financial surveillance of DCOs, FCMs, and other market participants such as SDs, MSPs, and large traders that may pose a risk to the markets. The Commission and U.S. futures exchanges employ a comprehensive large-trader reporting system (LTRS), where clearing members, FCMs, and foreign brokers (collectively called Reporting Firms) file daily reports with the Commission.

<sup>168</sup> The discussion in this section does not discuss the market surveillance conducted by DCOs.

As discussed in more detail below in response to Question 1(b) of this Principle (see Commission Oversight Procedures), RERs are formal, structured assessments of regulated entities' operations or oversight programs to assess ongoing compliance with statutory and regulatory mandates. Regular RERs are an effective method of ensuring that the entities' are complying with the Core Principles established in the CEA and Commission's regulations. The CFTC Staff conducts RERs of the larger exchanges approximately every year and about every two to three years for the smaller exchanges.

For a complete discussion of the CFTC's market surveillance and examinations activities, please see response to Principle 12.

(b) Includes regulatory oversight mechanisms to verify compliance by the exchange or trading system with its statutory or administrative responsibilities, particularly as they relate to the integrity of the markets, market surveillance, the monitoring of risks, and the ability to respond to such risks?

Yes.

**DCMs.** As discussed elsewhere, Section 5(d) of the CEA sets out the 23 Core Principles with which a DCM must comply on an ongoing basis in order to maintain designation as a contract market. As related to integrity of the markets, market surveillance, monitoring of risks and ability to respond to such risks, the following Core Principles apply:

- Core Principle 2 – Compliance with rules. A DCM must enforce compliance with rules related to access requirements, the terms and conditions of any contracts traded on the contract market and rules prohibiting abusive trade practices on the contract market. Additionally, the DCM must have the capacity to detect, investigate and apply appropriate sanctions to any person that violates the rules of the DCM.
- Core Principle 3 – Contracts not readily subject to manipulation. The DCM may only list contracts that are not readily susceptible to manipulation.
- Core Principle 4 – Prevention of Market Disruption. The DCM must have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance and enforcement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.
- Core Principle 5 - Position Limitations or Accountability. To reduce the potential threat of market manipulation or congestion, the DCM must adopt for each contract, as is necessary and appropriate, position limitations or position accountability for speculators.
- Core Principle 6 - Emergency Authority. The DCM must have rules to provide for the exercise of emergency authority including the authority to liquidate or transfer open positions in any contract, to suspend or curtail trading in any contract and to require market participants in any contract to meet special margin requirements.
- Core Principle 9 - Execution of Transactions. The DCM must provide a competitive, open and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market.
- Core Principle 10 - Trade Information. The DCM must maintain rules and procedures to provide for the recording and safe storage of all identifying trade information for the purpose of preventing customer and market abuses and providing evidence of rule violations.

- Core Principle 11 - Financial Integrity of Contracts. The DCM must establish and enforce rules providing for the financial integrity of any contracts traded on the exchange (including the clearing and settlement with a DCO), and rules to ensure the financial integrity of any FCMs and IBs and protection of customer funds.
- Core Principle 12 - Protection of Market Participants. The DCM must establish and enforce rules to protect market participants from abusive practices by any party, including abusive practices committed by a party acting as an agent for participant and to promote fair and equitable trading on the contract market.
- Core Principle 19 - Antitrust Considerations. The DCM shall not adopt any rule that results in an unreasonable restraint of trade or imposes any material anticompetitive burden on trading on the contract market.
- Core Principle 20 – System Safeguards. The DCM shall establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity; establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfilment of the responsibilities and obligations of the board of trade; and periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

Rules implementing the Core Principles, as well as illustrative guidance and acceptable practices for satisfaction of the Core Principle, are set forth in Part 38 of the Commission's regulations.

**SEFs.** Section 5h of the CEA sets out the 15 Core Principles with which a SEF must comply on an ongoing basis in order to maintain registration as a SEF. As related to integrity of the markets, market surveillance, monitoring of risks and ability to respond to such risks, the following Core Principles apply:

- Core Principle 2 – Compliance with rules. A SEF must enforce compliance with rules related to limitations on access to the SEF, the terms and conditions of the swaps traded on the SEF, and rules establishing and enforcing trading, trade processing and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules. The SEF must also establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders.
- Core Principle 3 - Contracts not readily subject to manipulation. The SEF may only permit the trading in swaps that are not readily susceptible to manipulation.
- Core Principle 4 – Monitoring of trading and trade processing. The SEF must establish and enforce rules detailing trading procedures to be used in entering and

executing orders and procedures for trade processing of swaps. The SEF must monitor trading in swaps to prevent manipulation, price distortion and disruptions of the delivery or cash settlement process through surveillance, compliance and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

- Core Principle 6 - Position Limitations or Accountability. For any contract subject to a position limitation established by the Commission, the SEF shall set the position limitation at a level no higher than the Commission limit and monitor positions established on or through the SEF for compliance with the limit.
- Core Principle 7 - Financial Integrity of Transactions. The SEF must establish and enforce rules providing for the financial integrity of swaps entered on or through the facility (including the clearing and settlement pursuant to CEA Section 2(h)(1)(A) which requires swaps that are required to be cleared to be submitted for clearing to a registered DCO or DCO that is exempt from registration under the CEA.<sup>169</sup>
- Core Principle 8 - Emergency Authority. The SEF must have rules to provide for the exercise of emergency authority including the authority to liquidate or transfer open positions in any swap, and to suspend or curtail trading in any swap.
- Core Principle 11 - Antitrust Considerations. The SEF shall not adopt any rule that results in an unreasonable restraint of trade or imposes any material anticompetitive burden on trading or clearing.
- Core Principle 14 – System Safeguards. The SEF shall establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems that are reliable and secure; have adequate scalable capacity; establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfilment of the responsibilities of the SEF; and periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

**Commission Oversight Procedures.** The Commission's regulatory scheme is aided by the assumption of self-regulatory responsibilities of DCMs and SEFs, and continuing oversight of these entities by the Commission of compliance with the Core Principles and Commission regulations.

In addition to monitoring DCM operations on an ongoing basis through compliance reporting and "for cause" inquiries, the Commission's staff periodically reviews the programs and procedures adopted by each DCM to ensure compliance with the relevant Core Principles and related regulations and to assess the effectiveness of DCM self-regulatory

<sup>169</sup> To date, the CFTC has not adopted regulations which provide for an exemption from DCO registration.



programs. (Note that CFTC Staff intends to conduct similar reviews and inspections of SEFs who obtain permanent registration status.

The operational integrity of DCMs is addressed through the CFTC's periodic RERs that broadly address market surveillance, trade practice surveillance and disciplinary programs. DMO's Examination Branch conducts regular reviews of each DCM's ongoing compliance with Core Principles through the self-regulatory programs operated by the exchange in order to enforce its rules, prevent market manipulation and customer and market abuses, and ensure the recording and safe storage of trade information.

Periodic RERs normally examine a DCM's audit trail, trade practice surveillance, disciplinary, and dispute resolution programs for compliance with the relevant Core Principles, which include Core Principle 10, Trade Information, and Core Principle 17, Recordkeeping with respect to audit trail programs; Core Principle 2, Compliance With Rules, and Core Principle 12, Protection of Market Participants with respect to trade practice surveillance and disciplinary programs; and Core Principle 13, Dispute Resolution, with respect to dispute resolution programs.

Other periodic RERs normally examine a DCM's market surveillance program for compliance with Core Principle 4, Monitoring of Trading, and Core Principle 5, Position Limitations or Accountability. On some occasions, these two types of RERs may be combined in a single RER. Market Compliance can also conduct horizontal RERs of the compliance of multiple exchanges in regard to particular Core Principles.

In conducting an RER, Commission Staff examines trading and compliance activities at the exchange in question over an extended time period selected by DMO, typically the twelve months immediately preceding the start of the review. Staff conducts extensive review and analysis of documents and systems used by the DCM in carrying out its self-regulatory responsibilities; interviews compliance officials and staff of the exchange; and prepares a detailed written report of its findings. In nearly all cases, the RER report is made available to the public and posted on [www.cftc.gov](http://www.cftc.gov).

(c) Provide the regulator with adequate access to all pre-trade and post-trade information available to market participants?

Yes.

#### DCMs

DCM Core Principle 7 requires each DCM to make available to market authorities, market participants, and the public accurate information concerning the terms and conditions of the contract market; the rules, regulations and mechanisms for executing transactions on or through the facilities of the contract market; and the rules and specifications describing the operation of the contract market's electronic matching platform or trade execution facility.

DCM Core Principle 8 requires each DCM to make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market. A DCM must also report swap transaction data to the public and to the

	<p>CFTC as prescribed in Parts 16, 43, and 45 of the CFTC's regulations.</p> <p><b>SEFs</b></p> <p>SEF Core Principle 5 requires each SEF to establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions under the Core Principles and to provide the information to the Commission on request.</p> <p>SEF Core Principle 9 requires each SEF to make public timely information on price, trading volume, and other trading data on swaps as prescribed by the Commission. Specifically, each SEF must report swap data as required in Parts 16, 43, and 45 of the Commission's regulations.</p>
2.	<p>Does the regulatory framework require that amendments to the rules or requirements of the exchange or trading system must be provided to, or approved by, the regulator?</p> <p>Yes. As discussed above, DCMs and SEFs generally may implement new rules or rule amendments by voluntarily submitting a rule change to the CFTC for review and approval under CFTC regulation 40.5 or by filing with the Commission a certification that the new rule or rule amendment complies with the CEA and CFTC Regulation 40.6.</p>
3.	<p>When the regulator determines that the exchange or trading system is unable to comply with the conditions of its approval, or with securities law or regulation, is there a mechanism that permits the regulator to:</p>
	<p>(a) Re-examine the exchange or trading system and impose a range of actions, such as restrictions or conditions on the market operator?</p>
	<p>(b) Withdraw the exchange or trading system's authorization?</p>
	<p>Yes, to all of the above. The CFTC has the power to direct DCMs and SEFs to alter or supplement their rules and to take such action as it deems to be necessary to maintain or restore orderly trading. See Sections 8a(7) and (9) of the CEA, respectively.</p> <p>CEA Sections 5(d)(1), 5b(c)(2), 5h(a)(1) and 6(b) authorize the CFTC to suspend or revoke a registrant's registration based on a failure or refusal to comply with any of the provisions of the CEA, CFTC regulations, or CFTC orders.</p>

<b>Principle 35 Regulation should promote transparency of trading.</b>	
<b>Key Questions</b>	
1.	Does the regulatory framework include:
(a)	requirements or arrangements for providing pre-trade (e.g., posting of orders) information to market participants?
<p>Yes.</p> <p><b>DCMs.</b> DCM Core Principle 9 requires a DCM to “provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade.” <i>See also</i> CFTC Regulation 38.500. The CFTC has regulations in place for the competitive execution of transactions, such that the purchase and sale of commodity futures and options that are traded on or subject to DCM rules “shall be executed openly and competitively by open outcry or posting of bids and offers or by other equally open and competitive methods, in the trading pit or ring or similar place provided by the contract market, during the regular hours prescribed by the contract market for trading in such commodity or commodity option.” CFTC Regulation 1.38.</p> <p>Consistent with the open and competitive execution requirements discussed above, all DCMs utilize central limit order books in which bids and offers are shown, and post price quote information on their public websites. DCMs are required to provide impartial access to their markets to independent software vendors, who are free to collect, aggregate and disseminate pre- and post- trade information to the public. DCMs must also make public the information regarding “rules, regulations, and mechanisms for executing transactions on or through the facilities of the contract” as well as rules and specifications describing the operation of the DCM’s electronic matching platform and/or trade execution facility under Core Principle 7. <i>See</i> CFTC Regulations 38.400 and 38.401.</p> <p><b>SEFs.</b> Section 5h(e) of the CEA provides a rule of construction that states that the goal of SEF registration is to promote the trading of swaps on swap execution facilities and to promote pre-trade price transparency in the swaps market. The Commission interprets this mandate as follows:</p> <p style="padding-left: 40px;">Pre-trade transparency with respect to the swaps market refers to making information about a swap available to the market, including bid (offers to buy) and offer (offers to sell) prices, quantity available at those prices, and other relevant information before the execution of a transaction. Such transparency lowers costs for investors, consumers, and businesses; lowers the risks of the swaps market to the economy; and enhances market integrity to protect market participants and the public. . . . By requiring the trading of swaps on SEFs and designated contract markets (DCMs), all market participants will benefit from viewing the prices of available bids and offers and from having access to transparent and competitive trading systems or platforms.<sup>170</sup></p>	
(b)	requirements or arrangements for providing post-trade information (e.g., last sale

<sup>170</sup> *Core Principles and Other Requirements for Swap Execution Facilities*, 78 FR 33477 (June 4, 2013).

price and volume of transaction) to market participants on a timely basis?

DCMs facilitate post-trade transparency by reporting the details of swap transactions on the DCM to a Commission-registered SDR. The DCM must transmit all swap transaction and pricing data for transactions executed on or pursuant to the rule of the DCM to the SDR as soon as technologically practicable after execution, unless the transaction qualifies for a reporting delay. The SDR must then, as soon as technologically practicable, disseminate the swap transaction information to the public in real-time. SDRs make the transaction information freely available to the public in a non-discriminatory manner through their websites.

Trade details made public through DCMs and SDRs include, but are not limited to: the trading date and time (execution timestamp), the unique product identifier and unique swap identifier, the unit price, price notation, quantity, venue identification, and amendments to previously disseminated information (by amendment or correction). See CFTC regulations included in Parts 43, 45, and 49.

With respect to futures and options trading, as discussed above regarding pre-trade transparency, DCM Core Principle 9 and CFTC Regulation 1.38 require DCMs to provide open and competitive trading on the markets that they operate. Consistent with these open and competitive execution requirements, all DCMs post price quote information on their public websites. In addition, DCMs are required to provide impartial access to their markets to independent software vendors, who collect, aggregate and disseminate pre- and post- trade information to the public.

DCMs have further daily obligations to make futures and swap transaction information available to the public under Commission Regulations 16.01 and 38.450. These include daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts.

For SEFs, post-trade transparency includes “the public and timely transmission of information on past trades, including execution time, volume and price:”

The Dodd-Frank Act also ensures that a broader universe of market participants receive pricing and volume information by providing such information upon the completion of every swap transaction (i.e., post-trade transparency). By requiring the trading of swaps on SEFs and designated contract markets (“DCMs”), all market participants will benefit from viewing the prices of available bids and offers and from having access to transparent and competitive trading systems or platforms.<sup>171</sup>

The Commission’s rules for SEFs also require real-time reporting of all swap transaction terms “as soon as technologically practicable” in order to meet the statutory mandate of

<sup>171</sup> *Core Principles and Other Requirements for Swap Execution Facilities*, 78 FR 33477, 33554.

post-trade price transparency. See CFTC Regulations 43.3(b) and 45.3(a)(1).

CFTC Regulation 16.01, applicable for both DCMs and SEFS, requires the reporting of transactions as follows:

(a) Trading volume and open contracts. (1) Each reporting market, as defined in part 15 of this chapter, must separately record for each business day the information prescribed in paragraphs (a)(2)(i) through (vi) of this section for each of the following contract categories:

(i) For futures, by commodity and by futures expiration date;

(ii) For options, by underlying futures contracts for options on futures contracts or by underlying commodity for options on commodities, and by put, by call, by expiration date and by strike price;

(iii) For swaps or class of swaps, by product type and by term life of the swap; and

(iv) For options on swaps or classes of options on swaps, by underlying swap contracts for options on swap contracts or by underlying commodity for options on swaps on commodities, and by put, by call, by expiration date and by strike price.

(2) Each reporting market must record for each trading session the following trading volume and open interest summary data:

(i) The option delta, where a delta system is used;

(ii) The total gross open contracts for futures, excluding those contracts against which delivery notices have been stopped;

(iii) For futures products that specify delivery, open contracts against which delivery notices have been issued on that business day;

(iv) The total volume of trading, excluding transfer trades or office trades:

(A) For swaps and options on swaps, trading volume shall be reported in terms of the number of contracts traded for standard-sized contracts (i.e., contracts with a set contract size for all transactions) or in terms of notional value for non-standard-sized contracts (i.e., contracts whose contract size is not set and can vary for each transaction).

(B) [Reserved]

(v) The total volume of futures/options/swaps/swaptions exchanged for

commodities or for derivatives positions that are included in the total volume of trading; and

(vi) The total volume of block trades included in the total volume of trading.

(b) Prices. (1) Each reporting market must record the following contract types separately

(i) For futures, by commodity and by futures expiration;

(ii) For options, by underlying futures contracts for options on futures contracts or by underlying commodity for options on commodities, and by put, by call, by expiration date and by strike price;

(iii) For swaps, by product type and contract month or term life of the swap; and

(iv) For options on swaps or classes of options on swaps, by underlying swap contracts for options on swap contracts or by underlying commodity for options on swaps on commodities, and by put, by call, by expiration date and by strike price.

(2) Each reporting market must record for the trading session and for the opening and closing periods of trading as determined by each reporting market:

(i) The opening and closing prices of each futures, option, swap or swaption;

(ii) The price that is used for settlement purposes, if different from the closing price; and

(iii) The lowest price of a sale or offer, whichever is lower, and the highest price of a sale or bid, whichever is higher, that the reporting market reasonably determines accurately reflects market conditions. Bids and offers vacated or withdrawn shall not be used in making this determination. A bid is vacated if followed by a higher bid or price and an offer is vacated if followed by a lower offer or price.

(3) If there are no transactions, bids, or offers during the opening or closing periods, the reporting market may record as appropriate:

(i) The first price (in lieu of opening price data) or the last price (in lieu of closing price data) occurring during the trading session, clearly indicating that such prices are the first and last prices; or

(ii) Nominal opening or nominal closing prices that the reporting market reasonably determines to accurately reflect market conditions, clearly indicating that such prices

are nominal.

(4) Additional information. Each reporting market must record the following information with respect to transactions in commodity futures, commodity options, swaps or options on swaps on that reporting market:

(i) The method used by the reporting market in determining nominal prices and settlement prices; and

(ii) If discretion is used by the reporting market in determining the opening and/or closing ranges or the settlement prices, an explanation that certain discretion may be employed by the reporting market and a description of the manner in which that discretion may be employed. Discretionary authority must be noted explicitly in each case in which it is applied (for example, by use of an asterisk or footnote).

(c) Critical dates. Each reporting market must report to the Commission, for each futures contract, the first notice date and the last trading date, and for each option contract, the expiration date in accordance with paragraph (d) of this section.

(d) Form, manner and time of filing reports. Unless otherwise approved by the Commission or its designee, reporting markets must submit to the Commission the information specified in paragraphs (a), (b), and (c) of this section as follows:

(1) Using the format, coding structure and electronic data transmission procedures approved in writing by the Commission or its designee; provided however, that the information must be made available to the Commission or its designee in hard copy upon request;

(2) When each such form of the data is first available, but not later than 7:00 a.m. on the business day following the day to which the information pertains for the delta factor and settlement price and not later than 12:00 p.m. for the remainder of the information. Unless otherwise specified by the Commission or its designee, the stated time is U.S. eastern standard time for information concerning markets located in that time zone, and U.S. central time for information concerning all other markets; and

(3) For information on reports to the Commission for swap or options on swap contracts, refer to part 20 of this chapter.

(e) Publication of recorded information. (1) Reporting markets must make the information in paragraph (a) of this section readily available to the news media and the general public without charge, in a format that readily enables the consideration of such data, no later than the business day following the day to which the

information pertains. The information in paragraphs (a)(2)(iv) through (vi) of this section shall be made readily available in a format that presents the information together.

(2) Reporting markets must make the information in paragraphs (b)(2) and (3) of this section readily available to the news media and the general public, and the information in paragraph (b)(4)(ii) of this section readily available to the general public, in a format that readily enables the consideration of such data, no later than the business day following the day to which the information pertains. Information in paragraph (b)(4)(i) of this section must be made available in the registered entity's rulebook, which is publicly accessible on its website.

**Commitments of Traders Reports.** The CFTC also publishes a variety of market transaction data, such as the Commitments of Traders ("COT") reports and "This Month in Futures Markets." The COT report is published weekly on the third business day after the "as of" date. The report includes data on the numbers of traders in each category, a crop-year breakout, concentration ratios and data on option positions. The report also available on the Commission's website free of charge.

The COT reports provide a breakdown of each Tuesday's open interest for markets in which 20 or more traders hold positions equal to or above the reporting levels established by the CFTC. The weekly reports for *Futures-Only Commitments of Traders* and for *Futures-and-Options-Combined Commitments of Traders* are released every Friday at 3:30 p.m. U.S. EST.

Reports are available in both a short and long format. The short report shows open interest separately by reportable and non-reportable positions. For reportable positions, additional data are provided for commercial and non-commercial holdings, spreading, changes from the previous report, percent of open interest by category, and numbers of traders. The long report, in addition to the information in the short report, also groups the data by crop year, where appropriate, and shows the concentration of positions held by the largest four and eight traders.

**Weekly Swaps Report.** The CFTC publishes a weekly report aggregating over-the-counter swap transactions reported to the various swap data repositories (SDRs). The report is published every Wednesday at 3:30 p.m., unless otherwise noted. Data for the week ending on a given Friday will appear in the report on the second following Wednesday (i.e. 12 days later).

The report provides three views of the swaps market: the gross notional outstanding value, the weekly transactions measured by dollar volume, and the weekly transactions measured by ticket volume. For each asset class, the report provides detailed breakdowns of the swaps market by product type, currency (six major currencies), tenor, participant type, and whether swaps are cleared or uncleared. The report presents data only on market-facing



swaps transactions, i.e. those transactions executed at arms-length between non-affiliated entities, which allows the public a view of the competitive marketplace. The Weekly Swaps Report is available free of charge at <http://www.cftc.gov/MarketReports/SwapsReports>.

(c) requirements or arrangements that information on completed transactions be provided on an equitable basis to all market participants?

Yes. DCM Core Principle 8, Daily Publication of Trading Information, requires that a DCM make available to the public accurate information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market. See CFTC Regulation 38.450. Additionally, DCM Core Principle 7, Availability Of General Information, requires a DCM to make publicly available accurate information regarding the contract market's terms and conditions of the contracts; the rules, regulations and mechanisms for executing transactions on or through the contract market; and the rules and specifications describing the operation of the contract market's electronic matching platform or trade execution facility. See CFTC Regulation 38.400 and 38.401. DCM Core Principle 7 requires making public the rules and specifications describing the operation of the DCM's electronic matching platform or trade execution facility. DCMs are required to "ensure that authorities, market participants, and the public have available all material information pertaining to new product listings, new or amended governance, trading and product rules, or other changes to information previously disclosed by the DCM." See CFTC Regulation 38.401.

Similarly, CFTC Regulation 37.500 requires that SEFs make certain swap data, including end of day pricing data and trading volume, publicly available each day.

CFTC Regulation 16.01 provides that reporting markets, both DCMs and SEFs, shall make readily available data pertaining to trading volume, open contracts, and price to the news media and general public without charge, in a format that readily enables the consideration of such data, for each business day following for each of the following contract categories:

- (i) For futures, by commodity and by futures expiration date;
- (ii) For options, by underlying futures contracts for options on futures contracts or by underlying commodity for options on commodities, and by put, by call, by expiration date and by strike price;
- (iii) For swaps or class of swaps, by product type and by term life of the swap; and
- (iv) For options on swaps or classes of options on swaps, by underlying swap contracts for options on swap contracts or by underlying commodity for options on swaps on commodities, and by put, by call, by expiration date and by strike price.

Section 21 of the CEA covers reporting by SDRs and addresses the provision of direct electronic access to the Commission as well as the establishment of "systems for monitoring, screening, and analyzing swap data, including compliance and frequency of end user clearing exemption claims by individual and affiliated entities." This section also refers to Section 2(a)(13) of the CEA on the "Public Availability of Swap Transaction Data." Section 2(a)(13) states: "[t]he purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery." Such real-time reporting is done "as soon as technologically practicable after the time at which the swap transaction has been executed."

2.	Where derogation from the objective of real-time transparency is permitted:
(a)	Are the conditions clearly defined?
	<p>Yes. Pre-trade public dissemination of transaction data is waived for swap transactions that are large in scale and qualify as a “block trade” or “large notional off-facility swap transaction” under Part 43 of the Commission’s regulations. A block trade in a swap occurs away from a DCM or SEF, but pursuant to the DCM’s or SEF’s rules, and has a notional or principle amount at or above the minimum block threshold. A large notional off-facility swap is an off-facility swap that does not meet the definition of a “block trade,” but is for a notional or principle amount in excess of the minimum block threshold. Post-trade public dissemination of transaction data is deferred for large transactions that qualify as a “block trade” or “large notional off-facility swap transaction” under Part 43 of the Commission’s regulations.</p>

<p>(b) Does the market authority (being either, or both, the exchange operator and the regulator) have access to the complete information to be able to assess the need for derogation and if necessary, to prescribe alternatives?</p>
<p>Yes. As discussed in detail in above, DCMs must comply with: DCM Core Principle 7 (Availability of General Information), DCM Core Principle 8 (Daily Publication of Trading Information), CFTC Regulation 16.01 (Publication of Market Data on Futures, Swaps and Options Thereon: Trading Volume, Open Contracts, Prices, and Critical Dates), CFTC Regulation 16.02 (Daily Trade and Supporting Data Reports), Part 43 (Real-Time Public Reporting), and Part 45 (Swap Data Recordkeeping and Reporting Requirements).</p> <p>DCM Core Principle 7 specifically states that market authorities must have access to trade information and, furthermore, DCMs “must have procedures, arrangements and resources for disclosing to the Commission, market participants and the public accurate information pertaining to:</p> <ul style="list-style-type: none"> <li>(i) Contract terms and conditions;</li> <li>(ii) Rules and regulations pertaining to the trading mechanisms; and</li> <li>(iii) Rules and specifications pertaining to operation of the electronic matching platform or trade execution facility” (CFTC Regulations 38.400 and 38.401).</li> </ul> <p>DCM Core Principle 8 states that daily information “on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market” must be made publicly available as contemplated in Commission regulations (CFTC Regulation 38.450; <i>see also</i> CFTC Regulation 16.01).</p> <p>The CFTC’s SEF regulations establish a similar set of requirements for SEFs, including CFTC Regulation 37.500 (Ability to obtain information), CFTC Regulation 37.502 (Collection of information), CFTC Regulation 37.503 (Provide information to the Commission), and CFTC Regulation 37.900 (Timely publication of trading information).</p>
<p>(c) Does the regulator have access to adequate information to monitor the development of dark trading and dark orders?</p>
<p>Futures must be traded on exchanges and so there is no dark trading in this area that the Commission could monitor or have access to.</p> <p>With respect to swaps, there exist both Required and Permitted Transactions. The former refers to transactions subject to the trade execution mandate under Section 2(h)(8) of the CEA and the latter refers to transactions that are not subject to the clearing and trade execution mandates, illiquid or bespoke swaps, or block trades Permitted Transactions are not subject to the trade execution mandate and could, therefore, be traded off-market. If they are traded on a SEF, however, they are required to be reported.</p>
<p>(d) Do transparent orders have priority over dark orders?</p>
<p>See response to Question 2(c), above.</p>

(e)	Do dark pools and transparent markets that offer dark orders provide market participants with sufficient information so that they are able to understand the manner in which their orders are handled and executed?
	A DCM's trade-matching algorithm, including any dark pool features, must be reflected as a rule in the DCM's transparent rulebook.

<b>Principle 36      Regulation should be designed to detect and deter manipulation and other unfair trading practices</b>	
<b>Key Questions</b>	
1.	Does the regulatory system prohibit the following with respect to securities admitted to trading on authorized exchanges and regulated trading systems:
(a)	Market or price manipulation?
(b)	Misleading information?
(c)	Insider trading?
(d)	Front running?
(e)	Other fraudulent or deceptive conduct and market abuses?
<p>Yes, to all of the above.</p> <p>As stated in the <i>IOSCO Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation</i> (August 2013) (“<i>Principles</i>”):</p> <p style="padding-left: 40px;">Investors should be protected from misleading, manipulative or fraudulent practices, including insider trading, front running or trading ahead of customers and the misuse of client assets. Investors in the securities markets are particularly vulnerable to misconduct by intermediaries and others, but the capacity of individual investors to take action may be limited. . . . Full disclosure of information material to investors’ decisions is the most important means for ensuring investor protection. Investors are, thereby, better able to assess the potential risks and rewards of their investments and, thus, to protect their own interests.</p> <p>It is also important to note that the <i>Principles</i> are intended to apply to the securities markets which, used in context, refers to “various market sectors, including markets for derivatives that are securities. The same interpretative convention applies to the use of the words ‘securities regulation.’ <i>The Principles are not, however, specifically tailored to address all issues that are particular to derivatives markets.</i> Accordingly, in determining whether the context permits the application of a Principle to derivatives, assessors should take into account the functional differences between, and the relevant jurisdiction’s statutory treatment of, securities and derivatives. <i>See Principles</i> (emphasis added).</p> <p>The CEA has multiple enforcement provisions related to items 1(a) through (e) above. See responses to Principle 12, Questions 3(a) through (c).</p> <p>CFTC Regulation 33.10 (which applies to DCMs pursuant to CFTC Regulation 38.2) makes it</p>	

unlawful for any person to cheat, defraud or attempt to cheat or defraud any other person; to make or cause to be made to any other person any false report or statement or record; or to deceive or attempt to deceive any other person by any means whatsoever in connection with commodity option transactions.

DCM Core Principles 3 and 4 require that contracts listed on a board of trade not be subject to manipulation, and that the DCM prevent market disruption. DCM Core Principle 3 addresses contracts not readily subject to manipulation, stating that the board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation. See DCM Core Principle 3 and CFTC Regulation 38.200. In order to demonstrate compliance with the requirement that contracts not be readily susceptible to manipulation, DCMs listing new futures contracts should provide the Commission with certain information, including, among other things, data and information to support the contract's terms and conditions and a detailed cash market description for physical and cash-settled contracts. When designing futures contracts, DCMs should conduct market research so that the product meets the risk management needs of users and promotes price discovery. For futures contracts settled by physical delivery, the terms and conditions should be designed to avoid impediments to delivery so as to promote convergence between the price of the futures contract and the cash-market value of the commodity. The specified terms and conditions should result in a deliverable supply that is sufficient to ensure that the contract is not susceptible to price manipulation or distortion. CFTC Regulation 38.252. For cash-settled futures contracts, contract specifications should fully describe the essential economic characteristics of the underlying commodity, as well as how the final settlement price is calculated. In evaluating susceptibility to manipulation, DCMs should consider the size and liquidity of the underlying cash market. CFTC Regulation 38.253. Each DCM must also demonstrate that it: monitors the pricing of the index to which the cash-settled contract will be settled; monitors the continued appropriateness of the methodology deriving the index; and makes a good faith effort to resolve conditions where there is a threat of market manipulation, disruptions, or distortions. CFTC Regulation 38.8. A DCM should determine that the reference price indices used for swap contracts are not readily susceptible to manipulation, giving careful consideration to the potential for manipulation or distortion of the cash settlement price, as well as the reliability of that price as an indicator of cash market value.

To reduce the potential threat of market manipulation or congestion (especially during trading in the delivery month), DCMs must for each contract, as is necessary and appropriate, adopt position limitations or position accountability for speculators. For any contract that is subject to a position limitation established by the Commission, the DCM must set the position limitation at a level not higher than the position limitation established by the Commission. See DCM Core Principle 5; CFTC Regulation 38.300.

DCM Core Principle 4 addresses prevention of market disruption, stating that the board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and

	<p>disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including (a) methods for conducting real-time monitoring of trading; and (b) comprehensive and accurate trade reconstructions. See CFTC Regulations 38.250-258.</p> <p>CFTC Regulation 28.255 requires that DCMs “establish and maintain risk control mechanisms to prevent and reduce the potential risk of price distortions and market disruptions, including, but not limited to, market restrictions that pause or halt trading in market conditions prescribed by the designated contract market.”</p>
2.	<p>Does the regulatory approach to detect and deter such conduct include an effective and appropriate combination of mechanisms drawn from the following:</p>
	<p>(a) Direct surveillance, inspection, reporting, such as, for example, securities listing or product design requirements (where applicable), position limits, audit trail requirements, quotation display rules, order handling rules, settlement price rules or market halts complemented by enforcement of the law and trading rules?</p>
	<p>(b) Effective, proportionate and dissuasive sanctions for violations?</p>
	<p>Yes, to all of the above. DCMs have the primary obligation to detect and deter unlawful conduct and use a combination of direct surveillance, inspection, reporting, product design requirements, position limits, settlement price rules or market halts complemented by vigorous enforcement of the law and trading rules.</p> <p>In addition to the exchange surveillance program, the CFTC independently conducts an extensive market surveillance program, utilizing large trader reports. See responses to Principle 9, Question 4 and Principles 12, 33, and 34 regarding the CFTC’s market surveillance program.</p> <p>The CFTC has robust sanctioning powers in cases of manipulation and other unfair trading practices which serve the twin purposes of punishing the wrongdoer and deterring misconduct by others, all in an effort to protect the integrity of the markets regulated by the CFTC. The sanctions apply across all markets within the CFTC’s jurisdiction and to registrants and non-registrants alike. These sanctions include:</p> <ol style="list-style-type: none"> <li>1. Trading ban - An order prohibiting a violator from trading on or subject to the rules of any (or all) contract market(s) and requiring contract markets to refuse such person all trading privileges thereon for such period as may be specified in the order, including a lifetime prohibition. This trading ban could be imposed on customers who trade, as well as registered intermediaries. Registration sanctions - an order suspending (for a period not more than six months), revoking or restricting a respondent’s registration with the Commission.</li> <li>2. Restitution - An order directing that a wrongdoer make restitution to customers of damages or losses caused by the respondent’s violations. It is a remedy designed to make victims whole.</li> </ol>



3. Disgorgement – An order directing that a respondent disgorge ill-gotten gains. It is a remedy that is designed to deprive a wrongdoer of the amount by which he profited from his wrongdoing, which in some cases differs from the amount of victim loss.
4. Civil penalties - An order assessing civil monetary penalties against a wrongdoer in an amount up to \$1,000,000 per manipulation violation or triple the monetary gain to the respondent for each such violation. Thus, a penalty is not limited to the amount of the gain to the wrongdoer.
5. Preliminary and permanent injunctions or cease and desist - Orders barring future violations of the Commodity Exchange Act and CFTC regulations and enforcing compliance with the Act and regulations.

In addition to the civil remedies and penalties available to the CFTC, manipulation, conversion, false statements to a registered entity or to the Commission and other willful violations of the Act are also felonies that may be prosecuted by the U.S. Department of Justice and are punishable by a fine of up to \$1 million or imprisonment for up to 10 years or both.

It is important to note that the Commission and the courts can mix and match the appropriate sanctions to the facts of the case in order to establish the appropriate relationship and proportion to the wrongdoing.

A recent case, *DiPlacido v. CFTC*, is illustrative. The Commission charged DiPlacido with manipulation, attempted manipulation, and aiding and abetting a manipulation involving trades for an energy trading company and non-competitive trading. DiPlacido was also charged with a recordkeeping violation for failing to promptly produce documents during the DOE's investigation. The manipulative scheme involved buying or selling electricity futures contracts on the NYMEX trading floor at prices higher or lower, respectively, than the prevailing price and placing large orders in these illiquid markets without legitimate economic reasons. These strategies were employed to increase the value of the trading company's OTC positions. DiPlacido was a registered floor broker who executed trades for the energy trading company.

After a contested hearing, the Commission found the Respondent liable for manipulating and attempting to manipulate the settlement price in the contracts at issue. In determining the appropriate sanctions, the Commission first explored the relationship of the underlying conduct to the regulatory purposes of the CEA and the facts and circumstances of the particular case. Upon finding that market manipulation is a core provision of the CEA and has been described as the "gravest offense under the Act," that the respondent was a knowing participant in unlawful conduct, intentionally and willingly engaged in trading strategies that he designed to drive up or down the settlement price in furtherance of the energy company's goals, that he directed his floor clerk to use code words to conceal the conduct, altered trading cards, refused to comply with Commission subpoena and attempted to obstruct the NYMEX investigation into his trading for the energy company, the

Commission imposed a cease and desist order, revoked the DiPlacido's registration as a floor broker, imposed a 20 year trading prohibition and a civil penalty for each violation, as follows:

- \$110,000 for each of 4 manipulations (totaling \$440,000);
- \$65,000 for reporting a non-competitive trade as bona fide;
- \$65,000 for altering a trading card; and
- \$40,000 for failure to promptly produce documents to the Commission.

The Commission explicitly stated that violations are not mitigated because there was no evidence of the DiPlacido's monetary gain or other financial consequences. Instead, the Commission recognized the need to protect market integrity and imposed a sanction based upon the relative level of gravity of the violations.

Under its emergency powers, when it has reason to believe an emergency exists, the Commission is authorized to direct a registered entity such as a DCM to take such action as in the Commission's judgment is necessary to maintain or restore orderly trading in or liquidation of any futures contract. The term "emergency" includes threatened or actual market manipulation or corners, any act of the United States or a foreign government affecting a commodity, or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand. See CEA Section 8a(9). DCMs are required to adopt rules that "provide for the exercise of emergency authority," which includes, among other powers, the ability to suspend or curtail all trading in a contract under Core Principle 6. This emergency authority is intended to allow DCMs to "intervene as necessary to maintain markets with fair and orderly trading and to prevent or address manipulation or disruptive trading practices. See Appendix B to Part 38 (Core Principle 6).

Section 6 of the CEA authorizes criminal penalties and sanctions for manipulation, attempted manipulation and all other willful violations of the CEA and CFTC regulations. Section 6(e) of the CEA provides an explicit prohibition against insider trading for certain persons, making it a felony:

(1) for any person who is an employee, member of the governing board, or member of any committee of a board of trade, registered entity, swap data repository, or registered futures association, in violation of a regulation issued by the Commission, willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon, or swaps, on the basis of, or willfully and knowingly to disclose for any purpose inconsistent with the performance of such person's official duties as an employee or member, any material nonpublic information obtained through special access related to the performance of such duties, or

(2) willfully and knowingly to trade for such person's own account, or for or on

	behalf of any other account, in contracts for future delivery or options thereon on the basis of material, nonpublic information that such person knows was obtained in violation of paragraph (1) from an employee, member of the governing board, or member of any committee of a board of trade, registered entity, or registered futures association.
3.	Are there arrangements in place for:
(a)	The continuous collection and analysis of information concerning trading activities?
(b)	Providing the results of such analysis to market and regulatory officials in a position to take remedial action if necessary?
(c)	Monitoring the conduct of market intermediaries participating in the market(s)?
(d)	Triggering further inquiry as to suspicious transactions or patterns of trading?
	Yes, to all of the above. Both the CFTC and DCMs conduct market surveillance. See response to Principle 34, Question 1(a), regarding the CFTC's market surveillance program.
4.	If there is potential for domestic cross-market trading, are there: inspection, assistance, and information-sharing requirements or arrangements in place to monitor and/or address domestic cross-market trading abuses?
	<p>Yes. The CFTC's market surveillance program, previously described in the response to Principle 34, Question 1(a), enables the CFTC to monitor and address domestic cross-market trading abuses. In addition, the CFTC has entered into Cooperative Arrangements that, among other things, provide for enforcement and investigative assistance to address domestic cross-market trading abuses. In addition, individual markets have entered into arrangements of their own.</p> <p><b>MOUs.</b> See Principles 13-15. The CFTC cooperates with foreign regulatory and enforcement authorities through formal MOUs and informal arrangements to combat cross-border fraud and other illegal practices that could harm customers or threaten market integrity.</p> <p>Cross-border information sharing among market authorities plays an integral role in the effective surveillance of global markets that are linked by products, participants, and technology. Information sharing arrangements can be critical in combating cross-border fraud and manipulation, addressing the financial risks of market participants, and sharing regulatory expertise on market oversight and supervision. The CFTC makes and receives a significant number of requests for assistance and information to and from foreign authorities in connection with various surveillance and enforcement issues.</p> <p>The CFTC has entered into Cooperative Arrangements with regulators in many jurisdictions, including cooperative enforcement arrangements, arrangements relating to sharing financial and other types of fitness information, and arrangements for sharing information on matters related to the implementation of the CFTC's Part 30 Regulations, which grant foreign firms an exemption from certain CFTC requirements.</p>

**Intermarket Surveillance Group.** The purpose of the Intermarket Surveillance Group (ISG) is to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket manipulations and trading abuses. The ISG plays a crucial role in information sharing among markets that trade securities, options on securities, security futures products, and futures and options on broad-based security indexes. The ISG also provides a forum for discussing common regulatory concerns, thus enhancing members' ability to fulfill efficiently their regulatory responsibilities. In effect, the ISG is an information-sharing cooperative governed by a written agreement. The ISG is not subject to regulatory oversight, nor does it file rule changes with the CFTC or the SEC or seek approval when it considers requests from securities or futures exchanges to become a member.

Membership in the ISG carries with it a commitment to share information required for regulatory purposes with other members. ISG agreements provide that information that is shared must be kept strictly confidential and used only for regulatory purposes. Such information is shared on an as-needed basis and only upon request. In addition, U.S. securities participants, via the facilities of the Securities Industry Automation Corporation (SIAC), routinely share trading information electronically.

In connection with the routine sharing of information, the ISG has defined certain types of violations which can occur across markets, and has allocated responsibility for surveillance for such activity to the appropriate member. This enables participants to avoid duplicative efforts while continuing to ensure effective intermarket surveillance.

Generally, the full ISG meets two times per year. Meetings are open only to representatives of members, prospective members, SIAC representatives, and appropriate governmental authorities such as the CFTC, SEC, the UK Financial Conduct Authority, and, on occasion, international organizations such as IOSCO. Senior market surveillance or market regulation personnel represent member organizations.

From time to time, and at the discretion of the Chairman of the ISG, subgroups may be formed to address specific issues of importance to the group. Such subgroups may be permanent or have a limited time depending on the subject. Subgroups are headed by a representative of a member or affiliate and are appointed by the Chairman. Meetings of subgroup members are generally independent of regular ISG meetings and may take place either at a location directed by the subgroup chairperson or telephonically during the interval between ISG meetings. Ordinarily, standing subgroups meet on the day preceding a full ISG meeting. Affiliate membership in the ISG is open to all recognized market centers that trade products that have rules and regulations designed to detect and deter possible abuses in their marketplaces. Participants in the ISG must have the ability to share regulatory information and otherwise cooperate with other ISG participants in connection with regulatory matters affecting their markets.

**Intermarket Financial Surveillance Group.** The Intermarket Financial Surveillance Group was formed in 1988 to provide a coordinating body to address financial surveillance issues relevant to both futures and securities markets. The IFSG includes most of the principal commodity and securities exchanges as well as the NFA and FINRA. The members of the IFSG have agreed to share financial information with respect to “high risk” member firms as commonly defined by the group. The agreement also provides for the exchange of information upon request regarding capital, segregation of customer funds, margins, liquidity problems, omnibus accounts carried and/or carrying brokers, and pay/collect data with respect to such high risk firms.

**Joint Audit Committee.** The JAC, which consists of representatives of the financial compliance departments of each of the futures industry SROs, was established in 1979 to coordinate the SROs’ audit and financial surveillance programs, including information-sharing, disciplinary actions, audit procedures, and assignment of audit responsibility for dual-membership firms, and to review current financial reporting issues and interpretations. CFTC staff frequently attends JAC meetings to discuss financial compliance issues.

**Joint Compliance Committee.** To foster improvements and uniformity in their systems and procedures used for trade practice compliance, the futures exchanges, at the CFTC’s urging, formed the Joint Compliance Committee (“JCC”). The JCC has developed uniform definitions of trade practice offenses and routinely meets to share information on automated compliance systems and other surveillance matters with a view to improving exchange compliance programs.

**International Exchange MOU.** In 1995, numerous derivatives exchanges developed an Exchange MOU that was created to address the problem of accessing information about large exposures where exchange member firms and market participants typically trade on multiple exchanges and no one regulator or market authority will have all of the information necessary to evaluate the risks in its markets. Under the Exchange MOU the occurrence of agreed triggering events affecting an exchange member’s financial resources, positions, price movements or price relationships will prompt the sharing of information.

5. If there are foreign linkages, substantial foreign participation, or cross listings, are there cooperation arrangements with relevant foreign regulators and/or markets that address manipulation or other abusive trading practices?

Yes. Pursuant to CFTC Regulation 48.7(c)(3), FBOTs that wish to register with the Commission in order to provide to members and other participants located in the United States with direct access to their respective trade matching systems are required to specifically identify any contract that the FBOT will make available in the United States that is linked to a contract listed for trading on a registered entity or has any other relationship with a contract listed for trading on a registered entity. Once registered, the FBOT must comply with specific conditions for registration, including the ongoing obligations regarding linked contracts set forth in CFTC Regulation 48.8(c)(2).<sup>172</sup> Specifically, the FBOT must: (1) report to the Commission on a quarterly basis, any member that had positions in a linked contract above the applicable FBOT trade position limit, whether a hedge exemption was granted and, if not, whether disciplinary action was taken; (2) for all linked contracts, provide to the Commission trade execution and audit trail data for the Commission's Trade Surveillance System on a trade-date plus one basis; (3) provide to the Commission, at least one day prior to the effective date thereof (except in the event of an emergency market situation) copies of or hyperlinks to all rules, rule amendments, circulars and other notices published by the FBOT with respect to all linked contracts; (4) provide to the Commission copies of all reports of disciplinary action involving the FBOT's linked contracts upon closure of the action; and (5) in the event that the Commission, pursuant to its emergency powers and authority, directs the registered entity that lists the contract to which the FBOT's contract is linked to take emergency action with respect to the contract, the FBOT, subject to information sharing arrangements between the Commission and its regulatory authority, must promptly take similar action.

6. Regarding authorities responsible for the supervision of commodity futures markets (e.g., either the market, a governmental regulator or an SRO) ("futures market regulators") only: Does the authority have access to information that permits it to identify concentrations of positions and the overall composition of the market, including the power to access a trader's related financial and underlying market positions?

See response detailing the COT Report in Principle 35, Question 1(b).

<sup>172</sup> A linked contract is defined in Commission Regulation 48.2(d) as a futures, option or swap contract that is made available for trading by direct access by a registered FBOT that settles against any price (including the daily or final settlement price) of one or more contracts listed for trading on a registered entity, as defined in CEA Section 1a(40).

<b>Principle 37</b>	<b>Regulation should aim to ensure the proper management of large exposures, default risk and market disruption</b>
<b>Key Questions</b>	
<i>Monitoring of Large Exposures</i>	
1.	Does the market authority have a mechanism in place that is intended to monitor and evaluate continuously the risk of open positions or credit exposures that are sufficiently large to expose a risk to the market or to a clearing firm that includes:
(a)	Qualitative or quantitative trigger levels appropriate to the market for the purpose of identifying large exposures (as defined by the market authority), continuous monitoring and an evaluative process?
<p>Yes. Section 3(b) of the CEA states that one of the purposes of the CEA is “to ensure the financial integrity of all transactions subject to this Act and the avoidance of systemic risk.” The CFTC’s examination group examines DCOs that are registered with the Commission for compliance with the 18 DCO Core Principles as well as all relevant CFTC regulations. These Core Principles encompass all aspects of clearing and involve a sophisticated analysis of a broad range of topics including, but not limited to, the adequacy of a DCO’s financial, operational, and managerial resources; the DCO’s ability to manage all risks associated with clearing and settlement, including whether the DCO uses appropriate tools and procedures to monitor such risks, whether the DCO’s risk analysis and oversight program is able to accurately identify and minimize sources of operational risk; and a DCO’s ability to resist, and to minimize any potential damage from cyber security threats. The exams group examines DCOs as frequently as practicable.</p> <p>The examinations group examines each SIDCO at least once annually to determine: (1) the nature of the operations of, and the risks borne by, the SIDCO; (2) the financial and operational risks presented by the SIDCO to financial institutions, critical markets, or the broader financial system; (3) the resources and capabilities of the SIDCO to monitor and control such risks; (4) the safety and soundness of the SIDCO; and (5) the SIDCO’s compliance with (A) Title VIII of the Dodd-Frank Act, and (B) the rules and orders prescribed under Title VIII of the Dodd-Frank Act. SIDCOs also are examined for compliance with the CEA and CFTC regulations including, <i>inter alia</i>, regulations that are consistent with the PFMI. The exams group also frequently coordinates with other domestic and foreign regulators during an examination.</p> <p>Finally, the DCO exams group also performs the following tasks: (i) reviews all quarterly submissions from DCOs to evaluate compliance with the CFTC’s financial resource requirements; (ii) reviews the certified financial statements of each DCO; (iii) reviews the notice filings from all DCOs; (iv) assists with DCO applications by reviewing information supporting the DCO applicant’s compliance with certain Core Principles; and (v) assists in the review of SIDCO material rule change filings.</p> <p>In addition, DCR’s RSG was established to aid the Commission in fulfilling the objective of the CEA to ensure the financial integrity of all transactions subject to the CEA and to avoid systemic risk. RSG is currently enhancing its program to ensure that it meets the significantly increased responsibilities created by the Dodd-Frank Act.</p>	



RSG defines risk as the potential that a market participant might not fulfill its financial obligations on a contract subject to the Commission's jurisdiction under the CEA. All futures and options must be cleared through a DCO. Many swaps are also now subject to a clearing mandate. Some traders are members of a DCO and clear for themselves while others use FCMs to clear for them. If a trader is unable to meet its obligations on a cleared contract, the obligations become those of the trader's clearing member. If the clearing member is unable to cover its obligations, the obligations become those of the DCO.

RSG attempts: (1) to identify positions in cleared products subject to the Commission's jurisdiction that pose significant financial risk; and (2) to confirm that these risks are being appropriately managed. The RSG undertakes these tasks at the trader level, the clearing member level, and the DCO level. That is, it identifies both traders that pose risks to clearing members and clearing members that pose risks to the DCO. It then evaluates the financial resources and risk management practices of traders, clearing members, and DCOs in relation to those risks.

The program for futures and options is well-established. Dodd-Frank, however, added responsibility for complex, high-volume products such as interest rate swaps (IRS) and credit default swaps (CDS). RSG is in the process of developing tools and techniques to address these products and to integrate the swaps program with the futures and options program.

## **RISK ASSESSMENT TECHNIQUES**

### **A. Overview**

The risk surveillance program contains four primary components: 1) identifying traders, clearing members, and DCOs at risk; 2) estimating the magnitude of the risk; 3) comparing the risk to the available financial resources; and 4) assessing the risk management practices of the traders, clearing members, and DCOs.

### **B. Identifying Traders, Clearing Members, and DCOs at Risk**

#### **1. Analysis Based on Account Characteristics**

RSG attempts to be proactive rather than reactive. Accordingly, staff attempts to identify traders and clearing members who might pose extraordinary risk before a market becomes volatile not just after the volatility appears. A number of different characteristics may trigger further scrutiny.

##### **a. Absolute size**

Simple size (as measured by IM requirements), of course, can be an indicator of risk. The composition of the position is also relevant. Assigning responsibility to the staff on a market-by-market basis permits analysts to develop familiarity



over time with the identity and trading patterns of the largest participants in their respective markets.

**b. Short option size**

Unlike futures, the risk of options is non-linear. That is, a price change that would cause a \$1,000 change in the value of a futures position might cause a \$20,000 change in the value of an option on that futures position. Accordingly, RSG pays particular attention to large net short option positions, particularly those that are deeply out-of-the-money. Recent volatility in certain markets has caused RSG to be very active in this area of risk monitoring. Furthermore, the risk of these traders often is increased because they tend to clear through smaller, less well-capitalized firms.

**c. Size relative to the market**

A position that is not large in absolute terms but is large relative to the market may pose additional risk. Such a concentrated position may be difficult to liquidate quickly without moving the market.

**d. Size relative to the initial margin on deposit**

Initial margin (IM) is the first layer of financial protection at both the FCM and DCO level. A trader or clearing firm that is currently subject to a margin call poses greater risk than a trader or clearing firm with an identical position that has excess IM on deposit.

**e. Size relative to the trader's assets**

A large position held by a trader that is well-capitalized would be of less concern than the same position held by a trader who did not have such "deep pockets." As discussed below, this is an area where follow-up may be more difficult because RSG does not have the same ready access to financial information about traders or self-clearing firms that it has for FCMs and DCOs.

**f. Size relative to the clearing members capital**

A position that is not large in absolute terms but is large relative to the clearing firm may pose significant risk. As discussed further below, the resources of the clearing firm are always a factor in assessing financial risk.

**g. Size relative to the DCO's resources**

In evaluating a DCO's financial resources, RSG measures a DCO's ability to cover

a default by the clearing member carrying the riskiest position. Greater concern would arise if positions on one side of a market were concentrated among a few firms than if they were dispersed over many firms.

**h. Cumulative size across multiple DCOs**

RSG has developed procedures to monitor changes in variation margin (VM) payments and IM deposits across DCOs. RSG identifies clearing firms that have, (1) increasing IM requirements, (2) VM payments that are a high percentage of the IM requirement, (3) VM payments that are larger than usual, and/or (4) a streak of losses on consecutive days. RSG analyzes which asset classes or products are driving the IM or VM movements and whether the movements are correlated across DCOs. In addition, RSG is developing procedures to monitor the aggregate risk of large traders across futures and swaps at different DCOs.

**i. News about a particular trader or FCM**

RSG may decide to perform additional analysis of a particular trader or FCM based on information staff learns from public sources, industry participants, or other Commission staff. For example, a large trader might be experiencing financial difficulties because of losses in a cash market or the securities markets.

**2. Analysis Based on Current Market Conditions**

RSG risk analysts routinely monitor conditions in their assigned markets throughout the day. Because of the work done in identifying accounts of interest, analysts are able to focus their efforts on those traders whose positions warrant heightened scrutiny under current conditions.

**C. Estimating the Magnitude of the Risk**

**1. Stress Testing**

After identifying traders or clearing members at risk, RSG estimates the magnitude of the risk. An essential technique in evaluating risk is the use of stress testing. Stress testing is the practice of determining the potential loss (gain) to a position or portfolio based on a hypothetical price change or a hypothetical change in a price input such as option volatility. For instance, a stress test will calculate the change in value of a portfolio of crude oil futures and option positions if the price of crude oil increases \$10 a barrel.

RSG conducts a wide array of stress tests. Some stress tests are based on the greatest price move over a specified period of time such as the last five years or the greatest historical price change. Another stress testing technique is the use of "event based"

stress testing that replicates the price changes on a particular date in history such as September 11, 2001 or the day of Hurricane Katrina. Price changes can be measured as a dollar amount or a percentage change. This flexibility can be helpful when price levels have changed by a large amount over time. For example, the actual price changes in equity indices in October 1987 are not particularly large at today's market levels but the percentage changes are meaningful.

The standard used in developing stress tests is "extreme but plausible" market moves.

## **2. Other Risk Estimation Techniques**

For futures and options, RSG is able to estimate losses for both clearing members and traders by performing a revaluation of every position in the portfolio under the hypothetical scenario. RSG is working to obtain the data and to develop the tools to do this for swaps. Currently, however, testing for swaps is more limited.

For CDS, RSG is currently able to stress test CDS clearing member positions on a limited basis. RSG also uses "DV01" and "DV1%" to evaluate the risk of CDS portfolios. DV01 is the sensitivity of a CDS portfolio to a 1 basis point move in the spread rates. DV1% is the sensitivity of a CDS portfolio to a 1 percent move in the spread rate. DV01 and DV1% give the analyst a quick idea of the level of risk in a CDS portfolio.

For IRS, stress test capabilities are under development. IRS stress testing initially will also be at the clearing member level. RSG uses delta ladders to evaluate the risk in an IRS portfolio. A delta ladder measures the sensitivity to a 1 basis point move in interest rates at various points on the interest rate curve. Delta ladders are used to give the analyst a quick look at the overall risk of an IRS portfolio. Delta ladders can also be used to identify concentrations of risk at various points on the interest rate curve.

## **D. Comparing Risks to Available Assets**

### **1. Initial Margin ("IM")**

After identifying accounts at risk and estimating the size of the risk, the third step is to compare that risk to the assets available to cover it. The first layer of protection is IM. Traders post IM to clearing members and clearing members post IM to DCOs. Pursuant to Commission Regulation 39.13(g), in setting IM requirements, a DCO must use models that generate IM requirements sufficient to cover the DCO's potential future exposures to clearing members based upon price movements in the interval between the last collection of VM and the liquidation times set forth in the regulation. The actual coverage of the IM must meet an established confidence level, of at least 99 percent, based on data from an appropriate historic time period and be commensurate with the specific characteristics and risks of each product and portfolio.

Because stress testing, by definition, involves extreme moves, hypothetical results will exceed IM requirements on a product basis, i.e., the price moves will be in the 1 percent tail. Many large traders, however, carry portfolios of positions with offsetting characteristics. In addition, many traders and clearing members deposit excess IM in their accounts. Therefore, even under stressed conditions, in many instances the total IM available may exceed potential losses or the shortfall may be relatively small.

## **2. Trader Assets**

If the potential losses significantly exceed IM, RSG looks at other resources of the trader. RSG can contact a trader or self-clearing firm directly or obtain additional information about their resources from the FCM and/or DCO.

## **3. Clearing Member Capital**

If a trader defaults on its obligations, the second layer of protection after IM is the clearing firm's capital. RSG monitors the financial statements of clearing members. Many clearing members are registered as FCMs and are required to file financial reports with the Commission. For those clearing members that are not FCMs, RSG routinely relies on the DCO to provide financial reports. The financial statements allow RSG staff to review assets, liabilities, and capital of the clearing member. These financial data are compared to the potential losses obtained through stress testing.

## **4. DCO Resources**

If a clearing member defaults on its obligations, the third layer of protection is the DCO. RSG compares the risk posed by clearing members to a DCO's financial resource package. This package typically includes IM, a guaranty fund, the DCO's capital, and a clearing member loss mutualization procedure.

Pursuant to Commission Regulation 39.11(a), a DCO must have sufficient financial resources to meet its 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. Pursuant to Commission Regulation 39.33(a), a SIDCO that is systemically important in multiple jurisdictions or is involved in activities with a more complex risk profile must maintain sufficient financial resources to enable it to meet its obligations to clearing members notwithstanding a default by the two clearing members creating the largest combined loss to the DCO. RSG periodically compares stress test results with DCOs to assess their financial capacity.

## **E. Assessing Risk Management Practices**

### **1. Traders**

#### **a. Follow-up on particular accounts or positions**

RSG staff routinely detects traders with risk that appears to be potentially excessive. In these instances, RSG staff seeks additional information from the trader or the FCM such as account statements or other financial documentation. This information often allays the concerns. If concerns remain, RSG staff often interviews clearing member or trader staff. These interviews focus on the trader's financial resources, trading strategy, trading techniques, and trading experience. For example, if the trader demonstrated that it was following a hedging strategy or had established a line of credit to fulfill margin calls, the concerns might dissipate.

#### **b. On-site reviews**

RSG has conducted on-site risk reviews with traders ranging from the largest hedge fund operators to individuals who write options and clear through small FCMs. Traders generally appreciate the opportunity to discuss RSG's analysis of the trader's risk. Traders usually have been forthcoming about the nature of their strategies, the financial resources available to cover the risk, and any risk-reducing positions they carry in markets not subject to the Commission's jurisdiction.

As discussed below, RSG comments or inquiries about traders often lead to follow-up by the clearing member or by the DCO. Similarly, from time to time, FCMs or DCOs provide information about traders generating follow-up by RSG.

#### **c. Special studies**

RSG periodically conducts special studies of traders targeting particular issues. For example, RSG has met with large asset managers to discuss the use of particular products in their hedging strategies.

### **2. Clearing Members**

#### **a. Follow-up on particular accounts or positions**

As part of daily surveillance, RSG identifies clearing members that carry large risks. The positions may be in the house account, the customer account in the aggregate, or individual customer accounts. RSG staff routinely discusses risk practices with clearing members in these contexts. For example, as a follow-up to a trader review, RSG might compare its stress test results with those of the

FCM clearing that account or gather information about the financial resources of a particular trader. There have been instances where, as a result of RSG comments or inquiries, FCMs have collected additional IM from traders or instructed traders to reduce their position.

**b. Monitoring of trends**

RSG produces a number of internal reports to track industry trends affecting clearing members. For example, certain daily reports track which clearing members had large variation margin (“VM”) payments relative to IM on deposit, large VM payments across DCOs, or strings of consecutive days with VM losses. Monthly reports summarize IM adequacy by product, profile the industry as measured by IM, and show which clearing members’ risks are increasing at particular DCOs or across DCOs and which clearing members’ risks are decreasing.

**c. On site reviews**

In October 2012, Regulation 1.73 “Clearing Futures Commission Merchant Risk Management” became effective. In general, CFTC Regulation 1.73 requires clearing members that are registered as FCMs to conduct screening of orders, to stress test customer and proprietary positions, to evaluate their ability to meet IM requirements, to evaluate their ability to meet VM payments, and to evaluate their ability to liquidate positions quickly.

RSG has a program to ensure compliance with CFTC Regulation 1.73. Each review is initiated with the issuance of an engagement letter and document request to the FCM. RSG staff analyzes the provided documents and subsequently conducts an on-site review at the clearing member. After completion of the review, RSG staff conducts an exit interview and issues a compliance letter detailing any changes necessary to come into compliance with the regulation.

**d. Special studies**

RSG periodically conducts special studies of clearing members targeting particular issues. Recently, RSG has been meeting with large FCMs regarding the sources of funding used and the procedures followed when the firm must make large VM payments at multiple DCOs on the same day. RSG also performed an analysis of cash movement between pension fund money managers, account trustees, and the account’s clearing firm. Currently, RSG is conducting an analysis of the risks of “Give-Up” trade procedures. A give-up trade is a transaction in which one exchange member executes a trade on behalf of a

customer and the customer instructs that the trade be immediately transferred to another member for clearing.

### **3. DCOs**

#### **a. Follow-up on particular accounts or positions**

RSG frequently discusses the risks of particular accounts or positions with DCO staff. For example, as a follow-up to a trader review, RSG might compare its stress test results with those of the DCO. As also noted above in the case of FCMs, there have been instances where, as a result of RSG comments or inquiries, DCOs have taken action.

#### **b. Monitoring of trends**

RSG produces a number of internal reports to track industry trends affecting DCOs. For example, certain daily reports summarize DCO IM and VM data and show products with large market moves relative to their IM requirement.

#### **c. Back testing of margin coverage**

As stated above, DCOs must set IM to cover 99 percent of one-day price changes. RSG evaluates each DCO's margin adequacy at both the product and portfolio level. RSG works with DCOs to obtain the data necessary to conduct the back testing program. RSG also discusses with DCOs their back testing methodology.

#### **d. Evaluation of margin models**

RSG is responsible for reviewing proposed DCO margin models. As discussed in more detail below, margin models can be extremely complex. In order to ensure consistency in the manner in which the models of different DCOs are evaluated, RSG has developed a standard questionnaire that has been provided to DCOs submitting models. RSG also documented its analysis both in more detailed, technical reports and in more policy-oriented, non-technical reports.

#### **e. Special studies**

As with clearing members, RSG periodically conducts special studies targeting particular issues involving DCOs. For example, RSG has conducted hypothetical auction exercises to identify potential weaknesses in DCO procedures. When a large clearing member, such as Lehman Brothers, defaults, a DCO may conduct an auction

of the entire portfolio rather than liquidating the positions piecemeal. The RSG exercises solicited bids from market participants on hypothetical portfolios. RSG reviews the results with the participating firms and DCOs.

## **TOOLS AND RESOURCES**

### **A. Overview**

RSG uses a number of tools to perform the tasks described above. Some were developed before Dodd-Frank and some after. Improving these tools and integrating them with one another is an ongoing process.

### **B. Pre-Dodd Frank**

#### **1. SPARK (Stressing Positions at Risk)**

SPARK is a proprietary system developed by Commission staff. SPARK uses large-trader data to identify and track positions of the riskiest traders and clearing members. SPARK contains current and historical position information and can produce a wide variety of standardized reports to aid risk analysts in reviewing positions. SPARK also features charting capabilities for analysis and presentations.

#### **2. SRM® (SPAN Risk Manager)**

SRM is a software program developed by the Chicago Mercantile Exchange ("CME") that calculates margin requirements on futures positions and has stress testing capability. RSG staff uses SRM in conjunction with SPARK to determine the margin requirements of large traders and to conduct stress tests on futures and options traders.

#### **3. ISS (Integrated Surveillance System)**

ISS is the large trader reporting system used in the Commission's market surveillance program. RSG uses ISS to identify traders in the futures and options markets whose positions warrant further analysis.

#### **4. RSR (Regulatory System Review) Express**

RSR is the system used by Commission staff to review the monthly financial statements filed by FCMs. It is updated monthly. RSG uses RSR in evaluating the capital resources of FCMs relative to the risks posed to them by their proprietary and customer positions.

#### **5. News/Price Sources**

RSG staff members monitor various news and price sources throughout the day.



## **C. Tools Developed Post-Dodd Frank**

### **1. DCO Reports**

Commission Regulation 39.19 requires DCOs to report certain position and margin information. RSG also receives certain ad-hoc reports from DCOs. These reports have greatly aided RSG risk surveillance efforts.

### **2. IRS Application**

RSG has developed an application, with the help of the Office of Data and Technology (ODT), to identify risk in cleared IRS products. The IRS application is able to aggregate and to report margins, notional values, and open interest. The application is also able to report sensitivities to moves in the interest rate markets for each clearing member and to calculate projected profits and losses under a variety of scenarios based on the sensitivities. As discussed further below, RSG is working to advance the maturity of this program.

### **3. MATLAB®**

MATLAB® is a commercial high-level language and interactive environment for numerical computation, visualization, and programming. RSG uses this software to conduct firm level CDS stress tests across all DCOs. RSG is also using this software to develop IRS stress testing capabilities.

### **4. Global Risk**

Global Risk is a commercial real-time, risk management solution used by trading groups, hedge funds, brokerages, FCMs, introducing brokers, clearing firms, and exchanges. Global Risk provides portfolio analysis and risk surveillance tools including the following:

- volatility surface modeling;
- portfolio analysis with price, market volatility, and time variables;
- real-time risk alerts based on dollar value of portfolio risk, and Greeks;
- P&L, trade, and position quantities;
- customized and standard DCO, firm, and trader level reporting by account and market;
- risk based filtering;
- detailed account analysis with what-if capability; and
- parametric VaR.

<p>The Commission recently obtained a Global Risk license. Eventually, RSG intends to use Global Risk as its primary risk analysis tool for futures and options. Global Risk will not replace SPARK and SPAN. It will enhance RSG's current risk analysis.</p>
<p>(b) Access to information, if needed, on the size and beneficial ownership of positions held by direct customers of market intermediaries?</p>
<p>Yes. The CFTC operates a comprehensive system of collecting information on market participants as part of its market surveillance program. Under the CFTC's regulations, the Commission collects market data and position information from exchanges, clearing members, FCMs, foreign brokers, and traders. Market surveillance staff assesses individual trader's activities and potential market power and enforces speculative position limits by using a large trader reporting system.</p> <p>Under Part 16 of the CFTC's regulations, DCMs must provide the Commission with confidential information on the aggregate positions and trading activity for each of their clearing members. Each day, exchanges report each clearing member's open long and short positions, purchases and sales, exchanges of futures for cash, and futures delivery notices for the previous trading day. This data is reported separately by proprietary and customer accounts by futures month, and for options by puts and calls, expiration date and strike price.</p> <p>Under Part 17 of the CFTC's regulations, clearing members, FCMs, and foreign brokers (collectively called reporting firms) file daily reports with the Commission. The reports show futures and options positions of traders with positions at or above specific reporting levels as set by the Commission. Since traders frequently carry futures positions through more than one broker and control or have a financial interest in more than one account, the Commission routinely collects information that enables its surveillance staff to aggregate related accounts. Reporting firms must file a form which identifies each new account with reportable positions for each futures contract. In addition, if a trader's position reaches a reportable level, the trader may be required to file a more detailed identification report to identify accounts and reveal any relationships that may exist with other accounts or traders.</p> <p>Under Parts 18 and 21 of the CFTC's regulations, market surveillance staff may investigate further the positions of large traders by instituting a "special call." The special call is designed to gain additional information about a firm's traders and/or about a participant's trading and delivery activity, including information on persons who control or have a financial interest in the account. The special call may also request information about positions and transactions in the underlying commodity. This mechanism may be used when a trader is using too many firms to be easily monitored through required reports.</p> <p>Under Part 20 of the CFTC's regulations, routine reports are required from DCOs, as well as clearing members and swap dealers with reportable positions in certain covered</p>

physical commodity swaps. Such large trader reporting provides the Commission with data regarding large positions in swaps that are linked, directly or indirectly, to a discrete list of U.S.-listed physical commodity futures contracts, in order to enable the Commission to implement and conduct effective surveillance of these economically equivalent swaps and futures. To facilitate surveillance efforts and the monitoring of trading across the swaps and futures markets, swaps positions are converted to equivalent positions of the related U.S. futures contract for reporting purposes. This system is intended to enable the Commission, in a prompt and efficient manner, to identify significant traders in the covered physical commodity swaps and to collect data on their trading activity in order to reconstruct market events.

The Commission thus has the authority and techniques to investigate and discover the identities of the true account owners and controllers of large positions, whether domestic or foreign.

- (c) The power to take appropriate action against a market participant that does not provide relevant information needed to evaluate an exposure (e.g., require liquidation of positions, increase margin requirements and/or revoke trading privileges)?

Yes. The CFTC, as well as DCMs and SEFs, have the power to intervene in the market, including for: the liquidation of positions, the establishment of special margin requirements, and the suspension or curtailment of trading.

### **CFTC Authority**

Section 8a(7) of the CEA authorizes the CFTC to alter or supplement the rules of a registered entity, and Section 8a(9) of the CEA authorizes the CFTC to direct a registered entity to take such action as in the CFTC's judgment is necessary to maintain or restore orderly trading in or liquidation of any contract. CFTC enforcement powers are comprehensive and authorize civil injunctive actions for failing to comply with requests for required information and subpoena enforcement actions for failure to comply with subpoena demand for documents or testimony. Failure to comply with a court order is punishable by contempt of court.

### **DCMs**

DCM Core Principle 6 provides that:

The board of trade (i.e., DCM), in consultation or cooperation with the Commission, shall adopt rules to provide for the exercise of emergency authority, as is necessary and appropriate, including the authority to –

- (A) to liquidate or transfer open positions in any contract;
- (B) to suspend or curtail trading in any contract; and
- (C) to require market participants in any contract to meet special margin requirements.

Under Part 38 of the CFTC's regulations, the CFTC set out the following guidance and acceptable practices in connection with DCM Core Principle 6:

- (a) Guidance. In consultation and cooperation with the Commission, a DCM should have the authority to intervene as necessary to maintain markets with fair and orderly trading and to prevent or address manipulation or disruptive trading practices, whether the need for intervention arises exclusively from the DCM's market or as part of a coordinated, cross-market intervention. DCM rules should include procedures and guidelines to avoid conflicts of interest in accordance with the provisions of part 40.9 of this chapter, and include alternate lines of communication and approval procedures to address emergencies associated with real-time events. To address perceived market threats, the designated contract market should have rules that allow it to take certain actions in the event of an emergency, as defined in part 40.1(h) of this chapter, including: imposing or modifying position limits, price limits, and intraday market restrictions; imposing special margin requirements; ordering the liquidation or transfer of open positions in any contract; ordering the fixing of a settlement price; extending or shortening the

expiration date or the trading hours; suspending or curtailing trading in any contract; transferring customer contracts and the margin or altering any contract's settlement terms or conditions; and, where applicable, providing for the carrying out of such actions through its agreements with its third-party provider of clearing or regulatory services. In situations where a contract is fungible with a contract on another platform, emergency action to liquidate or transfer open interest must be as directed, or agreed to, by the Commission or the Commission's staff. The DCM has the authority to independently respond to emergencies in an effective and timely manner consistent with the nature of the emergency, as long as all such actions taken by the DCM are made in good faith to protect the integrity of the markets. The Commission should be notified promptly of the DCM's exercise of emergency action, explaining how conflicts of interest were minimized, including the extent to which the DCM considered the effect of its emergency action on the underlying markets and on markets that are linked or referenced to the contract market and similar markets on other trading venues. Information on all regulatory actions carried out pursuant to a DCM's emergency authority should be included in a timely submission of a certified rule pursuant to part 40 of this chapter.

(b) **Acceptable Practices.** A DCM must have procedures and guidelines for decision-making and implementation of emergency intervention in the market. At a minimum, the DCM must have the authority to liquidate or transfer open positions in the market, suspend or curtail trading in any contract, and require market participants in any contract to meet special margin requirements. In situations where a contract is fungible with a contract on another platform, emergency action to liquidate or transfer open interest must be directed, or agreed to, by the Commission or the Commission's staff. The DCM must promptly notify the Commission of the exercise of its emergency authority, documenting its decision-making process, including how conflicts of interest were minimized, and the reasons for using its emergency authority. The DCM must also have rules that allow it to take such market actions as may be directed by the Commission.

### **SEFs**

SEF Core Principle 8 provides that:

The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in any swap.

Under Part 37 of the CFTC's regulations, the CFTC set out the following guidance in connection with SEF Core Principle 8:

(a) A SEF should have rules that authorize it to take certain actions in the event of an emergency, as defined in part 40.1(h) of this chapter. A swap execution facility should have the authority to intervene as necessary to maintain markets with fair and orderly trading and to prevent or address manipulation or disruptive trading practices, whether the need for intervention arises exclusively from the swap execution facility's market or as part of a coordinated, cross-market intervention. A

swap execution facility should have the flexibility and independence to address market emergencies in an effective and timely manner consistent with the nature of the emergency, as long as all such actions taken by the swap execution facility are made in good faith to protect the integrity of the markets. However, the swap execution facility should also have rules that allow it to take market actions as may be directed by the Commission. Additionally, in situations where a swap is traded on more than one platform, emergency action to liquidate or transfer open interest shall be as directed, or agreed to, by the Commission or the Commission's staff. Swap execution facility rules should include procedures and guidelines for decision-making and implementation of emergency intervention that avoid conflicts of interest in accordance with the provisions of section 40.9 of this chapter, and include alternate lines of communication and approval procedures to address emergencies associated with real time events. To address perceived market threats, the swap execution facility should have rules that allow it to take emergency actions, including imposing or modifying position limits, imposing or modifying price limits, imposing or modifying intraday market restrictions, imposing special margin requirements, ordering the liquidation or transfer of open positions in any contract, ordering the fixing of a settlement price, extending or shortening the expiration date or the trading hours, suspending or curtailing trading in any contract, transferring customer contracts and the margin, or altering any contract's settlement terms or conditions, or, if applicable, providing for the carrying out of such actions through its agreements with its third-party provider of clearing or regulatory services.

(b) A swap execution facility should promptly notify the Commission of its exercise of emergency action, explaining its decision-making process, the reasons for using its emergency authority, and how conflicts of interest were minimized, including the extent to which the swap execution facility considered the effect of its emergency action on the underlying markets and on markets that are linked or referenced to the contracts traded on its facility, including similar markets on other trading venues. Information on all regulatory actions carried out pursuant to a swap execution facility's emergency authority should be included in a timely submission of a certified rule pursuant to part 40 of this chapter.

(d) The general power to take appropriate action, such as to compel market participants carrying or controlling large positions to reduce their exposures or to post increased margin?

Yes. See response to Principle 34, Question 1.

2. Do arrangements, whether formal or informal, exist to enable markets and regulators to share information on large exposures of common market participants or on related products with regulators and markets:

(a) In the domestic jurisdiction?

Yes.

**DCMs.** The CFTC and futures exchanges have executed arrangements to share information that is prompted by, among other things, large exposures. The Commission essentially has the same information that DCMs have with respect to large exposure information. Wherever the exchanges manage position limits, they inform the Commission of any exemptions

granted. The exchanges are able to monitor the exposure size within each contract on an intraday basis. Frequent conversations occur between exchange and Commission staff when liquidation or acquisitions of large exposures create a heightened concern. This has become more relevant with the increased open interest held by large passive long-only traders (index traders).

In some specific contracts, when traders hold positions above a certain threshold they are required to disclose their full portfolio of related products. This rule was implemented in the wake of the disruptive activity by Amaranth Advisors in the Natural Gas futures contract traded on the NYMEX. These "exposure forms" are filed before the last day of trading of a specific contract month and are forwarded to CFTC surveillance staff. The need for this special disclosure derives from the existence of a large OTC market that is directly linked to the futures contract, and for positions which are not observable by the exchange. This model could be replicated in other contracts as the need arises.

Surveillance staff briefs Commissioners in closed meetings on Fridays when appropriate. See also response to Principle 36, Question 4.

(b) In other relevant jurisdictions?

The Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organizations ("Declaration"), and its companion Exchange Memorandum of Understanding (Exchange MOU),<sup>173</sup> was at the core of improvements in international cooperation contemplated at the 1995 Windsor meeting (which was convened following the collapse of Barings Plc.) That meeting, and the resulting *Windsor Declaration*, set in motion a series of international initiatives at both the regulatory and market level intended to enhance the resilience of the financial marketplace against the shocks or stress caused by such defaults. The *Declaration* (and companion Exchange MOU) were created to address the problem of accessing information about large exposures where exchange member firms and market participants typically trade on multiple exchanges and no one regulator or market authority will have all of the information necessary to evaluate the risks in its markets.

Under the *Declaration*, the occurrence of agreed triggering events affecting an exchange member's financial resources, positions, price movements or price relationships, or events suggesting manipulation or other abusive conduct, will prompt the sharing of information. See *Declaration* paragraphs 2.2 and 2.3. Although the *Declaration* is a multilateral arrangement containing appropriate confidentiality and use restrictions (and can serve as an independent arrangement for structuring the sharing of information), the *specific* implementation of any request pursuant to the *Declaration* will be on a bilateral basis and remain subject to any existing bilateral arrangements.

A special situation has arisen in WTI Crude Oil with the trading of a financially settled futures

<sup>173</sup> *Report on Cooperation Between Market Authorities and Default Procedures*, *supra*, at page 4 ¶ 8 regarding the promotion of formal/informal mechanisms. See also *Report on Trading Halts and Market Closures*. (October 2002). pp. 23-24.

<p>contract on ICE Europe which settlement price is directly linked to a contract trading on the NYMEX. Given that these two contracts are in effect a single market, on November 17, 2006 the CFTC and the United Kingdom Financial Services Authority (effective April 1, 2013, the Financial Conduct Authority) entered into Memorandum of Understanding concerning consultation, cooperation and the exchange of information related to market oversight. Under this arrangement, the Financial Conduct Authority and CFTC share information on a daily basis regarding large exposures.</p>	
<p><i>Default Procedures – Transparency and Effectiveness</i></p>	
3.	Does a market authority make its default procedures available to market participants, including specifically information concerning:
(a)	The general circumstances in which action may be taken?
(b)	Who may take it?
(c)	The scope of actions which may be taken.
<p>As mentioned above, if an FCM is executing transactions on a DCM, then such FCM must clear such transactions through a DCO. A DCO is essential to managing systemic and counterparty risks in the event that a member FCM fails. Because of the importance of the DCO in the management of such risks, Section 5b(c)(2)(L) of the CEA requires that a DCO provide “information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) available to market participants.” In general, most DCOs make their default procedures, including the information referenced in Questions 3(a), (b), and (c) above, accessible to the public via their website.</p> <p>Also as mentioned above, if an FCM becomes the subject of bankruptcy proceedings, then Subchapter IV and Part 190 set forth a clear structure for the liquidation of such FCM. Both Subchapter IV and Part 190 are publicly available.</p>	
4.	Do default procedures and/or national law permit markets and/or the clearing and settlement system(s) promptly to isolate the problem of a failing firm by addressing its open proprietary positions and positions it holds on behalf of customers or otherwise protect customer funds and assets from an intermediary’s default under national law?
<p>Yes. See response to Principle 32, Question 1.</p>	
5.	Is there a mechanism by which market authorities for related products can consult with each other in order to minimize the adverse effects of market disruptions?
<p>Yes. See response to Principle 32, Question 1.</p>	
<p><i>Short Selling on Equity Market</i></p>	
6.	Does the relevant market authority provide for:
(a)	Controls which are appropriate to the equity market in question and that have as their goal to reduce or minimize the potential risks that could affect the orderly and efficient functioning and stability of equity markets including, at a minimum, a strict settlement of failed trades?
<p>Not applicable. Questions relating to securities in the equity market are outside the scope of the CFTC’s jurisdiction.</p>	



(b)	A reporting regime that provides timely short selling information to the market or, as a minimum requirement, to market authorities?
	Not applicable. Questions relating to securities in the equity market are outside the scope of the CFTC's jurisdiction.
(c)	As part of an effective compliance and enforcement system (assessed under Principle 11), (i) measures that promote settlement discipline, including regular monitoring by the market authority of settlement failures and (ii) surveillance of short selling activities. Any deficiency here should also be taken into account in the assessment of principle 11.
	Not applicable. Questions relating to securities in the equity market are outside the scope of the CFTC's jurisdiction.
(d)	Appropriate exceptions for certain types of transactions for efficient market functioning and development (such as, but not limited to, bona fide hedging, market making and arbitrage activities)?
	Not applicable. Questions relating to securities in the equity market are outside the scope of the CFTC's jurisdiction.

***Not assessed.***

**Principle 38**      **Securities settlement systems and central counterparties should be subject to regulatory and supervisory requirements that are designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.**

The authorities do not need to provide information for this Principle, as there is a separate standard to assess securities clearing and settlement systems.

**Annex: Cooperative Arrangements with Foreign Regulators and Authorities**

**Supervision / Information Sharing**

- Multilateral:  
  
Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organizations (as amended March 1998)
- Australia:  
  
Reserve Bank of Australia and Australian Securities and Investments Commission – MOU Concerning Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Clearing Organizations (June 5, 2014)
- Austria:  
  
Finanzmarktaufsicht – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Belgium:  
  
Financial Services and Markets Authority – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Bulgaria:  
  
Financial Supervision Commission – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Canada:  
  
Alberta Securities Commission, British Columbia Securities Commission, Ontario Securities Commission, and Québec Autorité des Marchés Financiers – MOU Concerning Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Covered Entities (March 25, 2014)  
  
Ontario Securities Commission, Commission des Valeurs Mobilières du Québec (now Québec Autorité des Marchés Financiers), and Canadian SROs – Financial Information-Sharing MOU (September 23, 1991)

- Cyprus:  

Cyprus Securities and Exchange Commission – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Czech Republic:  

Czech National Bank – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Denmark:  

Finanstilsynet – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Estonia:  

Estonian Financial Supervision Authority – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Finland:  

Finanssivalvonta – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- France:  

Autorité des Marchés Financiers – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)

Autorité des Marchés Financiers and Autorité de Contrôle Prudentiel (now Autorité de Contrôle Prudentiel et de Résolution) – Understanding Concerning Supervision of LCH.Clearnet SA (January 4, 2011)

Conseil des Marchés Financiers (now Autorité des Marchés Financiers) – MOU Regarding Information Sharing on Remote Members of Regulated Markets (March 21, 2002)

Commission des Opérations de Bourse (now Autorité des Marchés Financiers) – Mutual Recognition MOU (June 13, 1990)

- Germany:  
Bundesanstalt für Finanzdienstleistungsaufsicht – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Greece:  
Hellenic Capital Market Commission – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Hong Kong:  
Securities and Futures Commission – Declaration on Cooperation and Supervision of Cross-Border Managed Futures Activity (October 5, 1995)
- Hungary:  
Pénzügyi Szervezetek Állami Felügyelete – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Iceland:  
Fjármálaeftirlitið – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Ireland:  
Central Bank of Ireland – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Italy:  
Commissione Nazionale per le Società e la Borsa – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)  
  
Commissione Nazionale per le Società e la Borsa – Supplemental MOU to Facilitate the Recognition of Regulated Markets (September 11, 2000)  
  
Commissione Nazionale per le Società e la Borsa – Exchange of Letters Relating to the Listing of Equity-Based Futures Contracts (April 5, 2000)

- Japan:  
Financial Services Agency of Japan – Memorandum of Cooperation Related to the Supervision of Cross-Border Covered Entities (March 10, 2014)
- Latvia:  
Finanšu un Kapitāla Tirgus Komisija – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Liechtenstein:  
Finanzmarktaufsicht – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Lithuania:  
Lithuanian Securities Commission – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Luxembourg:  
Commission de Surveillance du Secteur Financier – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Malta:  
Malta Financial Services Authority – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Netherlands:  
Autoriteit Financiële Markten – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Norway:  
Finanstilsynet – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)

- Poland:  
  
Polish Financial Supervision Authority – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Portugal:  
  
Comissão do Mercado de Valores Mobiliários – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Romania:  
  
Romanian National Securities Commission – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Singapore:  
  
Monetary Authority of Singapore – MOU Concerning Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Covered Entities (December 27, 2013)
- Slovak Republic:  
  
Národná Banka Slovenska – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Spain:  
  
Comisión Nacional del Mercado de Valores – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- Sweden:  
  
Finansinspektionen – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative Investment Fund Industry (July 22, 2013)
- United Kingdom:  
  
Financial Conduct Authority – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Covered Entities in the Alternative

Investment Fund Industry (July 22, 2013)

Financial Services Authority (now Bank of England) – MOU Concerning Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Clearing Organizations (September 14, 2009)

Financial Services Authority (now Financial Conduct Authority and Bank of England) – MOU Concerning Consultation, Cooperation and the Exchange of Information Related to Market Oversight (November 17, 2006)

Financial Services Authority (now Financial Conduct Authority and Bank of England) – Arrangement on Warehouse Information to Facilitate Exchanges of Information for Surveillance and Enforcement Purposes Regarding Deliverable Commodities (May 17, 2000)

Bank of England (now also Financial Conduct Authority and Prudential Regulation Authority) – MOU Concluded Jointly with U.S. SEC for Sharing Supervisory Information on Certain Firms (October 27, 1997)

Securities and Investments Board (now Financial Conduct Authority) and United Kingdom SROs – Financial Information-Sharing MOU (September 1, 1988); Addendum (May 15, 1989)

## Technical Assistance

- Chile:  
Superintendencia de Valores y Seguros de Chile – MOU Regarding Futures Regulatory Cooperation and Technical Assistance (September 13, 2002)
- China:  
China Securities Regulatory Commission – MOU Regarding Futures Regulatory Cooperation (and Technical Assistance) (January 18, 2002)
- India:  
Forward Markets Commission of India – Arrangement Regarding Regulatory Cooperation and Technical Assistance (October 18, 2006)  
Securities and Exchange Board of India – MOU Regarding Regulatory Cooperation, Consultation and the Provision of Technical Assistance (April 28, 2004)
- Russia:  
Commodities' Exchanges Commission of the Ministry of the Russian Federation for Anti-



Monopoly Policy and Support of Entrepreneurship – Joint Statement Regarding  
Cooperation, Consultation and the Provision of Technical Assistance (December 11, 2000)

- Thailand:  
  
Office of the Agricultural Futures Trading Commission of Thailand – Arrangement Regarding  
Regulatory Cooperation and Technical Assistance (March 26, 2006)

**Enforcement**

- Multilateral:  
  
IOSCO MMOU Concerning Consultation and Cooperation and the Exchange of Information  
(revised May 2012)
- Argentina:  
  
Comisión Nacional de Valores – MOU on Consultation, Technical Assistance, and Mutual  
Assistance for the Exchange of Information (May 30, 1995)
- Australia:  
  
Australian Securities Commission (now Australian Securities and Investments Commission) –  
MOU Concerning Consultation and Cooperation in the Administration and Enforcement of  
Futures Laws (October 19, 1994)
- Brazil:  
  
Comissão de Valores Mobiliários – MOU on Mutual Assistance and Exchange of Information  
(April 12, 1991)
- Canada:  
  
Ontario Securities Commission – MOU (July 7, 1992)  
  
Commission des Valeurs Mobilières du Québec (now Québec Autorité des Marchés  
Financiers) – MOU (July 7, 1992)
- Dubai:  
  
Dubai Financial Services Authority – Protocol Concerning Mutual Assistance, Information  
Sharing and Cooperation Agreements (December 1, 2005)
- France:  
  
Commission des Opérations de Bourse (now Autorité des Marchés Financiers) –

Administrative Agreement (June 6, 1990)

- Germany:  
Bundesaufsichtsamt für den Wertpapierhandel (now Bundesanstalt für Finanzdienstleistungsaufsicht) – MOU Concerning Consultation and Cooperation in the Administration and Enforcement of Futures Laws (October 17, 1997)
- Hong Kong:  
Securities and Futures Commission – MOU Concerning Consultation and Cooperation in the Administration and Enforcement of Futures Laws (October 5, 1995)
- Ireland:  
Irish Financial Services Regulatory Authority (now Central Bank of Ireland) – Statement of Intent Concerning Consultation and Cooperation in the Administration and Enforcement of Futures Laws (March 17, 2004)
- Isle of Man:  
Financial Supervision Commission – Statement of Intent Concerning Mutual Assistance and Cooperation Arrangements (April 12, 2005)
- Italy:  
Commissione Nazionale per le Società e la Borsa – MOU on Consultation and Mutual Assistance for the Exchange of Information (June 22, 1995)
- Japan:  
Financial Services Agency of Japan – Statement of Intent Concluded Jointly with U.S. SEC Concerning Cooperation, Consultation and the Exchange of Information (May 17, 2002); Amendment (January 16, 2006)
- Jersey:  
Jersey Financial Services Commission – MOU Concluded Jointly with U.S. SEC Concerning Cooperation, Consultation and the Exchange of Information (May 22, 2002)
- Mexico:  
Comisión Nacional Bancaria y de Valores – MOU on Consultation, Technical Assistance, and Mutual Assistance for the Exchange of Information (May 11, 1995)
- Netherlands:  
Government of the Kingdom of the Netherlands – Agreement (through the Government of

the United States of America) on Mutual Administrative Assistance in the Exchange of Information in Futures Matters (April 29, 1993) – Ministry of Finance designated the Securities Board of the Netherlands and Dutch Central Bank to implement the Agreement, which entered into force on February 1, 1994

- New Zealand:  
  
New Zealand Securities Commission – MOU on Consultation and Mutual Assistance for the Exchange of Information (September 16, 1996)
- Portugal:  
  
Comissão do Mercado de Valores Mobiliários – MOU Concerning Consultation and Cooperation in the Administration and Enforcement of Futures Laws (February 4, 1999)
- Singapore:  
  
Monetary Authority of Singapore – MOU Concluded Jointly with U.S. SEC Concerning Consultation and Cooperation and the Exchange of Information (May 16, 2000)
- South Africa:  
  
Financial Services Board of the Republic of South Africa – Joint Communiqué on Exchange of Information for Cooperation and Consultation (May 27, 1997)
- Spain:  
  
Comisión Nacional del Mercado de Valores – MOU on Mutual Assistance and Exchange of Information (October 26, 1992)
- Switzerland:  
  
Swiss Confederation – Diplomatic Notes (through the Government of the United States of America) amending Article 1, Paragraph 3 of the Treaty on Mutual Assistance in Criminal Matters (November 3, 1993)
- Taiwan:  
  
Taiwan Securities and Exchange Commission (now Securities and Futures Commission) – MOU on the Exchange of Information Concerning Commodity Futures and Options Matters through, respectively, the American Institute in Taiwan and the Coordination Council for North American Affairs (now the Taipei Economic and Cultural Representative Office in the United States) (January 11, 1993)
- Turkey:

Capital Markets Board of Turkey – MOU Concerning Consultation, Cooperation and the Exchange of Information (June 25, 2001)

- United Kingdom:

Department of Trade and Industry (now Financial Conduct Authority) – MOU Concluded Jointly with U.S. SEC on Exchange of Information in Matters Relating to Securities and Futures (September 23, 1986)

Department of Trade and Industry and Securities and Investments Board (now Financial Conduct Authority, Prudential Regulation Authority, and Bank of England) – MOU Concluded Jointly with U.S. SEC on Mutual Assistance and the Exchange of Information (September 25, 1991)