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*VIA ELECTRONIC SUBMISSION*

Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

October 11, 2022

**Re: Notice of Proposed Rulemaking: Governance Requirements for  
Derivatives Clearing Organizations (RIN 3038-AF15)**

Dear Mr. Kirkpatrick,

Eurex Clearing AG (“Eurex Clearing”) appreciates the opportunity to provide comments to the U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”) regarding the Commission’s Notice of Proposed Rulemaking: Governance Requirements for Derivatives Clearing Organizations published on August 11, 2022 (“Proposal”).<sup>1</sup> Eurex Clearing has been a fully registered derivatives clearing organization for swaps with the CFTC since 2016 and also qualifies as a central counterparty (“CCP”) pursuant to Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties, and trade repositories (“EMIR”). Eurex Clearing is one of the leading CCPs globally, clearing the broadest scope of products under a single framework in Europe and accepting the world’s widest spectrum of eligible collateral.

Eurex Clearing welcomes and generally supports the Commission’s Proposal, which is a positive step to codifying best practices for DCO governance standards and making such standards uniform across DCOs. Eurex Clearing applauds the Commission for its consistent work to harmonize CFTC regulations with international standards and specifically, with respect to the Proposal, commends the Commission for harmonizing much of it with existing EU regulation

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<sup>1</sup> Notice of Proposed Rulemaking: Governance Requirements for Derivatives Clearing Organizations, 87 Fed. Reg. 49559 (Aug. 11, 2022).

pertaining to CCP risk committees. However, as discussed further in the responses below, Eurex Clearing believes there are areas where the Proposal deviates from existing DCO best practices pertaining to risk committees and other committees that Eurex Clearing and other DCOs have successfully had in place for years. Eurex Clearing recommends that the Commission note these areas that conflict with and, in some cases, could upend existing best practices among DCOs that have already proven successful. Overall, Eurex Clearing believes that the DCO Core Principles and accompanying CFTC regulations strike a sound balance between providing the Commission with the regulatory supervision required to fulfill its mandate with DCOs' need for flexibility in designing their regulatory and compliance policies and procedures to meet the unique characteristics of each DCO.

In Europe, Article 28 (Risk committee) of EMIR and Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing EMIR ("EU Regulation 153/2013") have had in place since 2013 rules governing the risk committees of EMIR-qualified CCPs. As discussed further in the responses below, Eurex Clearing believes the Commission should take into account this existing regulation to avoid duplicative, overlapping, or conflicting regulation for CCPs, which by their nature operate on a global scale and are frequently subject to supervision in more than one jurisdiction.

Pursuant to these EU regulations and its best practices, since 2013, Eurex Clearing has had in place its EMIR Risk Committee, which advises the Supervisory Board and Executive Board<sup>2</sup> of Eurex Clearing on any arrangements that may impact the risk management of the CCP, such as a significant change in its risk model, the default procedures, the criteria for accepting clearing members, the clearing of new classes of instruments, or the outsourcing of functions. Section 1.5 of the FCM Regulations of Eurex Clearing ("FCM Regulations") incorporates the EMIR Risk Committee's role within Eurex Clearing's U.S. LSOC offering, providing that the matters on which the EMIR Risk Committee may advise may result in changes to this U.S. offering. In accordance with Article 28 of EMIR, the EMIR Risk Committee is composed of members of the Supervisory Board of Eurex Clearing, representatives of clearing members, and representatives of clients.<sup>3</sup> The EMIR Risk Committee operates pursuant to Eurex Clearing's Statutes for the EMIR Risk Committee, which are publicly available.<sup>4</sup> As discussed further below, Eurex Clearing's EMIR Risk Committee

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<sup>2</sup> Eurex Clearing operates under a two-tiered board structure. The Supervisory Board of Eurex Clearing is responsible for overseeing the work of the Executive Board of Eurex Clearing, appoints its members, and approves of major corporate decisions and corporate planning. The Executive Board of Eurex Clearing is responsible for the management and operations of Eurex Clearing pursuant to sections 76 to 78 of the German Stock Corporation Act (*Aktiengesetz*).

<sup>3</sup> Further information on the EMIR Risk Committee can be found at: <https://www.eurex.com/ec-en/find/corporate-overview/committees/emir-risk-committee>.

<sup>4</sup> See Eurex Clearing, Statutes for the EMIR Risk Committee, at: <https://www.eurex.com/ec-en/rules-regs/rules-and-regulations/1.-Clearing-Conditions-53674>.

already satisfies most of the Commission's proposed amendments and exceeds the minimum requirements of the Proposal in many areas.

While neither EMIR nor EU Regulation 152/2013 specifically requires CCPs to establish other market advisory or participant groups, such as market participant risk advisory groups ("RWGs") set forth in the Proposal, Eurex Clearing has already established and consults with several committees. Eurex Clearing has always understood the importance of in being in continuous dialogue with its customers to inform and integrate members from all market segments into its consultation process. To that end, in addition to the EMIR Risk Committee, Eurex Clearing has already established the following committees:

- FIC Board Advisory Committee
- Repo Board Advisory Committee
- Eurex Derivatives Committee
- Securities Clearing and Settlement Committee
- Fixed Income Product Committee
- Default Management Committee.<sup>5</sup>

As discussed further below, Eurex Clearing respectfully disagrees with the Proposal's codification of an RWG requirement as well as the specific rules proposed for RWGs. Eurex Clearing believes that such codification and specific rules are not necessary for DCOs that have already created a risk management committee ("RMC") or EMIR Risk Committee, which already ensures a broad and diverse representation of clearing participants and clients, already provide all affected customers with the opportunity to comment on rule changes, and interact with the risk committee for any such changes that materially affect the DCO's risk profile. Eurex Clearing believes the proposed codification of a requirement for further committees or working groups beyond the risk committee as well as the manner of their operation could disrupt existing DCO best practices and should be left to the discretion of the DCO.

Eurex Clearing provides the following responses to the sections laid out in the Proposal as well as the Commission's specific requests for comment:

## **II. Proposed Amendments to § 39.24(b)**

### **A. Establishment and Consultation of RMC—§ 39.24(b)(11)**

Eurex Clearing supports proposed § 39.24(b)(11), which would require a DCO to maintain governance arrangements that establish one or more RMCs, and require a DCO's board of directors to consult with, and consider and respond to input from, its RMC(s) on all matters that could materially affect the risk profile of the DCO. Proposed § 39.24(b)(11) would also identify a non-exhaustive list of matters that could materially affect the risk profile of the DCO, including any

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<sup>5</sup> Further information on these committees is discussed on pp. 7-8 and can be found at: <https://www.eurex.com/ec-en/find/corporate-overview/committees>.

material change to the DCO's margin model, default procedures, participation requirements, as well as the clearing of new products. Eurex Clearing notes that this aligns with Article 28(1)-(3) of EMIR, which requires the establishment of a risk committee, which advises the board on any arrangements that may impact the risk management of the CCP, followed by a similar non-exhaustive list of such matters. Section 2(1) of Eurex Clearing's Statutes for the EMIR Risk Committee lists all matters the EMIR Risk Committee advises on, including any material risk-related matters, and is harmonized with proposed § 39.24(b)(11). Accordingly, Eurex Clearing already fulfills proposed § 39.24(b)(11) with its establishment of the EMIR Risk Committee since 2013, which has successfully fulfilled the same mandate proposed in this amendment.

- *Whether a DCO's proposal to clear a new product should be categorically treated as a matter that could materially affect the DCO's risk profile for purposes of the proposed RMC consultation requirement given the heightened potential for novel and complex risks associated with clearing new products. If so, should the Commission define what constitutes a new product for this purpose, and how should it do so? For example, should the Commission define new products to include those that have margining, liquidity, default management, pricing, or other risk characteristics that differ from those currently cleared by the DCO? In the alternative, should the Commission require DCOs to adopt policies defining what constitutes a new product?*

Eurex Clearing believes the Commission should not adopt such a categorical rule for new products. Eurex Clearing believes the requirement that a DCO consult with its RMC(s) on all matters that could materially affect the risk profile of the DCO strikes the correct balance between codifying and making uniform this best practice for DCOs, while preserving the needed flexibility for each DCO to manage the unique risks it faces. This also is harmonized with EMIR, Article 28(3) of which requires the risk committee to advise on the clearing of new classes of instruments. Therefore, for any new product offered by a DCO, Eurex Clearing provides that the RMC consultation requirement should only apply when a new product creates a new material risk for the DCO. Otherwise, to apply this requirement categorically for any new product would create a large, unnecessary burden for DCOs with no corresponding risk benefit. Eurex Clearing is a registered DCO for swaps and offers its full range of interest rate swaps ("IRS") to FCMs and U.S. clients of FCMs under its LSOC clearing model. For example, if a DCO that already supports several currencies adds another currency to its IRS portfolio, this would only constitute a minor extension of existing arrangements and would not have a material impact on the DCO's risk profile.

Nor does Eurex Clearing believe the Commission should define when a new product would be subject to the RMC consultation process, as this should be left to the discretion of each DCO without the constraint of a categorical rule. DCOs worldwide clear different products with very different risk profiles. In keeping with the DCO Core Principles framework, which aims to provide flexibility

to DCOs within the Commission's supervisory structure, Eurex Clearing believes the Commission should leave it to DCOs' discretion to determine when a new product materially affects the risk profile of the DCO.

**B. Policies and Procedures Governing RMC Consultation—§ 39.24(b)(11)(i)**

Eurex Clearing supports proposed § 39.24(b)(11)(i), which would require a DCO to maintain written policies and procedures to make certain that the RMC consultation process is described in detail, and includes requirements for the DCO to document the board's consideration of and response to RMC input. Eurex Clearing notes that this broadly aligns with Article 28(2) of EMIR, which requires that a CCP determine the mandate, governance arrangements to ensure its independence, the operational procedures, the admission criteria, and the election mechanism for risk committee members. Article 28(2) additionally provides that the governance arrangements must be publicly available and must, at least, determine that the risk committee is chaired by an independent member of the board, reports directly to the board, and holds regular meetings. In addition, proposed § 39.24(b)(11)(i) aligns with Article 15 of EU regulation 153/2013, which requires that a CCP maintain the minutes of meetings of the risk committee. Accordingly, Eurex Clearing already complies with proposed § 39.24(b)(11)(i) and supports its adoption.

- *Whether DCOs should be required to create and maintain minutes or other documentation of RMC meetings.*

Eurex Clearing supports this proposed requirement and, as discussed above, notes that it aligns with Article 15 of EU regulation 153/2013. Eurex Clearing already complies with this.

**C. Representation of Clearing Members and Customers on RMC—§ 39.24(b)(11)(ii)**

Eurex Clearing supports proposed § 39.24(b)(11)(ii), which would require a DCO to maintain policies to make certain that an RMC includes representatives from clearing members and customers of clearing members. Eurex Clearing notes that this aligns with Article 28(1) of EMIR, which requires that a CCP's risk committee be composed of representatives of its clearing members, independent members of the board, and representatives of its clients. In addition, Article 28(1) specifies that none of the groups of representatives may have a majority in the risk committee. Eurex Clearing already complies with this proposed amendment and notes that the members of its EMIR Risk Committee are publicly available.<sup>6</sup>

- *Whether the Commission should adopt additional specific composition requirements, and if so, what those requirements should be.*

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<sup>6</sup> See *supra* note 2.

Eurex Clearing does not believe the Commission should adopt additional specific composition requirements for an RMC, as such specifics should be left within the discretion of the DCO; however, Eurex Clearing does believe the Commission could adopt a more limited safeguard to prevent a certain group of representatives from exerting undue influence. For example, Eurex Clearing believes the Commission could introduce a safeguard, as under EMIR, to ensure that none of the groups of representatives may have a majority in the risk committee. Eurex Clearing though does not believe this is required and believes that the proposed amendment as stated in proposed § 39.24(b)(11)(ii) strikes the correct balance between requiring clearing member and clearing member customer representation on RMC(s) with affording DCOs with the flexibility needed to implement RMC(s) that meet the unique characteristics of each DCO.

#### **D. Rotation of RMC Membership—§ 39.24(b)(11)(iii)**

Eurex Clearing does not believe the Commission should adopt proposed § 39.24(b)(11)(iii), which would require a DCO to maintain policies to make certain that membership of an RMC is rotated on a regular basis. Based on Eurex Clearing's experience with its EMIR Risk Committee, Eurex Clearing has learned that it is helpful to allow members to serve multiple terms in order to retain institutional knowledge on the Committee. Furthermore, Eurex Clearing believes there are more effective ways to ensure a representation of diverse views in DCO governance (e.g., balance between clearing members and clients). Eurex Clearing notes that proposed § 39.24(b)(11)(iii) does not align with EU regulation, which affords CCPs the discretion to determine their nomination, renomination, and rotation policies. Section 4 of Eurex Clearing's Statutes for the EMIR Risk Committee already provides clear, public nomination procedures for the Committee.<sup>7</sup> Only if an RMC member were to satisfy these nomination terms could the member be renominated to a consecutive term. Eurex Clearing has successfully operated its EMIR Risk Committee since 2013 and urges the Commission to refrain from proposed changes that would significantly change its procedures. Eurex Clearing believes the Commission could rather require DCOs to specify nomination and renomination procedures in their written policies and procedures, but should leave DCOs with the flexibility to determine the precise nature of these terms.

- *Whether the Commission should set a minimum frequency for RMC membership rotation.*

As stated above, Eurex Clearing does not believe the Commission should adopt any precise requirement for rotation of RMC membership and should also not specify any minimum frequency for such rotation, but could rather require that DCOs' policies and procedures address nomination procedures in their rulebooks.

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<sup>7</sup> See *id.*

#### **E. Establishment of RWG to Obtain Input—§ 39.24(b)(12)**

Eurex Clearing appreciates and agrees with the Proposal's recognition that dialogue between a CCP and a broad array of market participants provides invaluable mutual benefit, yet respectfully disagrees with the Commission's proposed amendment to codify this requirement for DCOs as well as the specific language stated in proposed § 39.24(b)(12). Eurex Clearing notes that proposed § 39.24(b)(12) does not harmonize with EMIR or EU Regulation 152/2013, which leave the establishment of further committees beyond the risk committee to the discretion of the CCP, and believes that proposed § 39.24(b)(12) could upend existing DCO best practices.

§ 39.24(b)(12) as proposed would both require the establishment of one or more RWGs and require that it be "a forum to seek risk-based input from a broad array of market participants, such that a diverse cross-section of the derivative clearing organization's clearing members and customers of clearing members are represented, regarding all matters that could materially affect the risk profile of the derivatives clearing organization." Eurex Clearing believes the decision to establish additional committees or working groups beyond an RMC for the purposes of gathering risk-based input should be left to the discretion of the DCO, especially where a DCO, such as Eurex Clearing, routinely seeks customer input, including by providing the opportunity for comment on any rule change and taking into account customer feedback on risk matters at all times. Eurex Clearing expects that such an establishment of an RWG could require substantial additional resources by the DCO in order to be implemented and that these resources may not be commensurate with the added value represented by an RWG in comparison to other forms of participation.

Eurex Clearing as a leading CCP has always understood the paramount importance of operating in continuous dialogue with its customers and, while not required by EU regulation, has already established the following six advisory working groups, which have successfully operated for many years:

- The FIC Board Advisory Committee: Established for the purpose of consulting with and making recommendations to the executive boards of Eurex Clearing, Eurex Frankfurt AG, and Eurex Repo GmbH with respect to Fixed Income and Currencies ("FIC") matters related to the general FIC strategy as well as product and service expansions in Fixed Income and Currencies with particular focus on certain growth products.
- The Repo Board Advisory Committee: Established for the purpose of consulting with and making recommendations to the executive boards of Eurex Clearing and Eurex Repo GmbH with respect to repo matters related to the general repo strategy as well as product and service expansions and developments.
- The Eurex Derivatives Committee: Established to regularly inform clearing members about planned changes to Eurex Clearing's service offering for listed and OTC derivatives and to serve as a

forum for clearing members to provide feedback to Eurex Clearing on all functional and operational aspects of its derivatives clearing offering.

- The Securities Clearing and Settlement Committee: Established to provide clearing members with detailed information regarding potential changes to Eurex Clearing's service offering; further, clearing members support and advise Eurex Clearing on all functional and operational aspects arising in connection with the execution and clearing of business in products cleared by Eurex Clearing.
- The Fixed Income Product Committee: Established to consult with and make recommendations to the Management Board of Eurex Clearing on matters relating to the clearing of Fixed Income Derivatives.
- The Default Management Committee: Involves clearing members and ensures the availability of the best possible knowledge and expertise in case of a default; assists Eurex Clearing with regards to any relevant matter of the Default Management Process of one or more Liquidation Groups; participates in the regular default simulation exercises.<sup>8</sup>

Eurex Clearing has established these specific committees based on its unique nature as a DCO. These Committees consider a wide variety of customer input, ranging from risk-based and default-specific to commercially-driven and product innovation-related. Eurex Clearing thus believes the Commission should not implement any categorical RWG requirement on DCOs and, if it chooses to so implement a requirement for a committee beyond an RMC, should omit from any final rule any precise requirement on the type of input an RWG should be receiving to satisfy the rule. Eurex Clearing believes the Commission should afford DCOs the discretion to define the scope of any committee it establishes beyond the risk committee.

Eurex Clearing also respectfully disagrees with § 39.24(b)(12)'s proposed requirement to require a DCO to maintain policies and procedures regarding the formation and role of each RWG. As discussed, Eurex Clearing does not believe the Commission should adopt an RWG requirement and, if it chooses to do so, should leave the framework by which each committee beyond the risk committee functions up to the discretion of the DCO.

- *Whether the proposed requirement that each RWG convene quarterly is the appropriate frequency.*

As Eurex Clearing does not believe that DCOs should be required to create RWGs, Eurex Clearing also respectfully disagrees with § 39.24(b)(12)'s

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<sup>8</sup> Further information on these Committees is publicly available at: <https://www.eurex.com/ec-en/find/corporate-overview/committees>.



proposed requirement to require each RWG to convene at least quarterly or on any other required frequency. Eurex Clearing's Committees are each significantly different, and Eurex Clearing believes implementing a uniform minimum meeting frequency requirement would be arbitrary, not contribute to the goals of ensuring effective member participation, and force changes to Eurex Clearing's long-standing successful operation of its committees. Eurex Clearing believes the frequency with which a working group or committee convenes should be left to the discretion of the DCO.

- *Whether the Commission should require DCOs to document the proceedings of RWG meetings.*

Eurex Clearing believes the Commission should not require DCOs to document the proceedings of all RWG meetings. As discussed above, each of Eurex Clearing's Committees is different, and such a requirement would force changes to Eurex Clearing's long-standing successful operation of its committees. Eurex Clearing believes that the Commission should afford DCOs discretion as to how they operate and document meetings for committees established beyond a RMC.

## **II. Proposed Amendments to § 39.24(c)**

### **A. Fitness Standards for RMC Members—§ 39.24(c)(1)**

Eurex Clearing supports proposed § 39.24(c)(1), which would require a DCO to establish and enforce appropriate fitness standards for its RMC members. While not expressly stated in this manner in EMIR or EU Regulation 153/2013, Article 28(2) of EMIR provides that a CCP must clearly determine governance arrangements to ensure the independence of the risk committee as well as admission criteria for risk committee members. Eurex Clearing already complies with proposed § 39.24(c)(1), as Section 4 of its Statutes for the EMIR Risk Committee delineates the required fitness standards for members. In doing so, Eurex Clearing ensures that all members have the necessary experience, skills, knowledge, and authorizations to make valuable contributions to the committee.

### **B. Role of RMC Members as Independent Experts—§ 39.24(c)(3)**

Eurex Clearing believes this proposed amendment should focus on a risk committee's duty of confidentiality and prevention of conflicts of interest. Proposed § 39.24(c)(3) would require a DCO to maintain policies designed to enable its RMC members to provide independent, expert opinions in the form of risk-based input on all matters presented to the RMC for consideration, and perform their duties in a manner that supports the safety and efficiency of the DCO and the stability of the broader financial system. Eurex Clearing notes that Article 28(4) of EMIR provides that the members of the risk committee are bound by confidentiality and that where the chairman of the risk committee determines that a member has an actual or potential conflict of interest on a particular matter, that member must not be allowed to vote on that matter. Eurex Clearing complies

with these requirements, and additionally has provided in Section 12 of its Statutes for the EMIR Risk Committee that no Committee member shall, to the extent legally possible, owe any fiduciary duties or other duties to Eurex Clearing and other related parties.

Eurex Clearing believes this proposed amendment could be harmonized with EU regulation and fulfill the same interest in ensuring that RMC members feel empowered to provide objective input. Specifically, Eurex Clearing believes the Commission could require that DCOs' policies require that all RMC members be bound by confidentiality, address the avoidance of conflicts of risk, and specify that RMC members owe no fiduciary duties to DCOs. Eurex Clearing believes this would also reflect the best practices that DCOs successfully already have in place for RMCs.

### **III. Request for Comment**

#### **A. Market Participant Consultation Prior to a Rule Change**

- *Whether the Commission should also require a DCO to consult with a broad spectrum of market participants prior to submitting any rule change pursuant to §§ 40.5, 40.6, or 40.10. If so, what constitutes a sufficiently broad spectrum of market participants, and how should the DCO engage that group? Should a DCO be required to consult only on those rule changes that could materially affect the DCO's risk profile?*

Eurex Clearing believes the Commission should not require a DCO to consult with a broad spectrum of market participants prior to submitting any rule change pursuant to §§ 40.5, 40.6, or 40.10. CFTC Regulation § 40.6's self-certification process requires that registered entities, including DCOs, submit all amendments to their rulebooks to the Commission (with the exceptions provided for in § 40.6(d)) in the manner prescribed by § 40.6 and requires that the Commission receive the submission not later than ten business days prior to the DCO's implementation of the rule or rule amendment. § 40.6 requires that registered entities provide a brief explanation of any substantive opposing views or a statement that none have been expressed. Eurex Clearing believes § 40.6 provides a robust process for registered entities to implement rules and consider opposing views, and that the decision as to whether to implement further consultations should reside within the discretion of the DCO.

Eurex Clearing in fact has already established a comprehensive process in which clearing members receive notice of all upcoming rulebook changes that affect them and have the opportunity to provide written feedback to Eurex Clearing. Section 16.2.2 of the FCM Regulations of Eurex Clearing ("FCM Regulations") and Section 6.2.2 of the FCM Default Rules of Eurex Clearing ("FCM Default Rules") provide that any change to the FCM Regulations or FCM Default Rules will be published to all affected FCM Clearing Members at least fifteen business days prior to the effective date. Section 16.2.3 of the FCM Regulations and Section 6.2.3 of the FCM Default Rules provide that any FCM

Clearing Member affected by a proposed change to the FCM Regulations or FCM Default Rules, respectively, may submit comments to Eurex Clearing within the first ten business days of the fifteen-business-day notification period. Outside of the formal rule change consultation process, Eurex Clearing notes that it always considers clearing member opinion at any time on any risk-related matter.

Further, Section 6.2.3 of the FCM Default Rules incorporates the EMIR Risk Committee for all risk-related rule changes, providing, *“If necessary, Eurex Clearing AG will consult the EMIR Risk Committee within the scope of competence of the EMIR Risk Committee . . . .”* As described above, Eurex Clearing is required to consult with the EMIR Risk Committee in case of any material risk-related changes to the Eurex Clearing rulebooks.

Eurex Clearing provides that, were a DCO to have to consult with a broad spectrum of market participants for every new rule or rule amendment, regardless of substance, this would significantly impede the DCO’s operations. The majority of Eurex Clearing’s § 40.6 submissions pursuant to § 40.6 are for changes that have no effect on its risk profile (e.g., minor fee changes, introduction new products with the same class it already clears, changes to chapters of the Clearing Conditions completely distinct from OTC clearing). Eurex Clearing believes that the standard stated in proposed § 39.24(b)(11) is proper and would require a DCO to launch the RMC consultation process only where any new rule or rule amendment materially affects the risk profile of the DCO.

- *In accomplishing effective consultation, is there value to requiring a DCO to respond to market participant feedback? Specifically, where specific risk-based feedback from market participants has not been incorporated in the DCO’s decision, should the DCO be required to respond to market participants informing them of the decision and outlining the rationale behind their action? How could such a requirement be tailored to avoid forcing a DCO to respond to excessively detailed or irrelevant comments?*

For the reasons discussed above, Eurex Clearing believes the Commission should not require a DCO to respond to market participant feedback. As the Commission correctly observes in the Proposal, such a requirement could create an undue burden and significantly impede a DCO’s operations given the potential breadth or multiplication of similar comments. Eurex Clearing believes that the decision of how and when to respond to market participant feedback should be left solely to the discretion of the DCO.

- *Commission regulations currently require a DCO to provide to the Commission a “brief explanation of any substantive opposing views.” Should the Commission further clarify the meaning of “substantive” in the context of this requirement? Should a DCO be required to provide the Commission with a report of all opposing views expressed to the DCO? Rather than expecting the DCO to accurately describe opposing views, should the Commission only require a DCO to pass on to the Commission any opposing views expressed to the DCO in writing? Should a DCO be required in its*

*submission to the Commission to respond to opposing views expressed to the DCO? Finally, should the Commission consider additional rules to address a DCO's failure to comply with the full submission requirements of part 40, such as the imposition of an automatic stay?*

Eurex Clearing believes the Commission does not need to further clarify the meaning of “substantive” within the context of Part 40’s requirement, as this requirement can be properly left to the judgment of the DCO. In addition, Eurex Clearing believes the Commission should not require a DCO to provide the Commission with a report of all opposing views expressed to the DCO, or of those opposing views expressed in writing. Eurex Clearing believes that § 40.6’s existing requirement to provide a brief explanation of any substantive opposing views expressed to the DCO is sufficient to provide the Commission and public with information regarding opposing views. Such a proposed requirement could significantly impede a DCO’s operations, and Eurex Clearing reiterates that the decision of how and when to respond to all comments should be left solely to the discretion of the DCO.

#### **B. RMC Member Information Sharing with Firm to Obtain Expert Opinions**

- *Whether DCOs should be required to maintain policies and procedures designed to enable an RMC member to share certain types of information it learns in its capacity as an RMC member with fellow employees in order to obtain additional expert opinion. If so, what types of information should be eligible to be shared? What measures should be taken to ensure that confidential information is appropriately protected?*

Eurex Clearing believes the Commission could harmonize such a requirement with a confidentiality provision, as discussed above in response to proposed § 39.24(c)(3). Eurex Clearing believes this would align with current best practices that have been successfully implemented by DCOs. In addition, this would align with Article 28(4) of EMIR, which states, “Without prejudice to the right of competent authorities to be duly informed, the members of the risk committee shall be bound by confidentiality.” Eurex Clearing does not believe further regulation beyond this is necessary. The concrete application of such a confidentiality provision should then be further detailed in the DCO’s RMC policies. For instance, the confidentiality provision in Eurex Clearing’s Statutes for the EMIR Risk Committee, Section 11, allows internal information sharing by members within strict limits (e.g., for the purposes of preparing for relevant matters to be discussed on the committee).

In conclusion, Eurex Clearing reiterates its appreciation for the opportunity to provide information and comments on the Proposal and looks

forward to working with the Commission on other proposals and initiatives in the future.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'E. Seinsheimer', with a long horizontal stroke extending to the right.

Eric Seinsheimer  
Director, Legal (Americas), Eurex &  
US CCO, Eurex Clearing AG