October 18, 2022

Chris Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st St. NW
Washington, DC 20581

Submitted via email

Re: Governance Requirements for Derivatives Clearing Organizations ("DCOs"), RIN 3038-AF15

Barclays, BlackRock, Inc., Citigroup Inc., Goldman Sachs Group, Inc., JPMorgan Chase & Co., Societe Generale, T. Rowe Price, UBS AG, and The Vanguard Group appreciate the opportunity to submit comments to the Commodity Futures Trading Commission ("CFTC" or "Commission") request for comment on proposed governance requirements for derivatives clearing organizations ("Proposal").

We recognize that the basis of the proposed rulemaking was provided by the CFTC's CCP Risk & Governance Subcommittee of the Market Risk Advisory Committee, which allowed various cleared market constituents (clearing members, DCOs, end-users and academics) to develop actionable recommendations to enhance a DCO's risk governance. The Commission's subsequent work to turn these recommendations into prosed rules is commendable and we are pleased to offer our views on them and the broader Proposal.

Appropriate risk governance is essential across financial markets. In cleared markets, effective risk governance is the mechanism that ensures that those who bear potential losses have sufficient visibility into CCP risk management frameworks to fully understand their participation risks and have a meaningful voice with regard to how such risk is managed.

Our white paper, which was first published in October 2019 and has 20 signatories across global buy-side and sell-side firms ("White Paper"), provided 20 recommendations to enhance risk management standards at CCPs, including governance. One of the White Paper's key recommendations is to require enhanced *"governance practices to obtain and address input from a broader array of market participants on relevant risk issues."*[1] Importantly, many of the other White Paper recommendations are intrinsically tied to governance, as an effective governance structure allows a more balanced set of perspectives to be actively considered.

[1] "A Path Forward for CCP Resilience, Recovery, and Resolution," March 10, 2020

Support for proposed rulemaking

The Proposal is broadly consistent with many of the recommendations in our White Paper. Specifically:

a. **Proposed Rule 39.24(b)(11)** would require a DCO's board to "consult with and consider and respond to input from, the risk management committees." This is directionally consistent with our White Paper's recommendation that a DCO's board should "*balance the CCP's role as a provider of critical market infrastructure with its obligation to earn returns for shareholders*."

b. **Proposed Rule 39.24(b)(11)(ii)** would require a DCO's risk management committee to include representatives from clearing members and customers of clearing members. This is consistent with our recommendation that "*governance arrangements need to capture input from both clearing members and end-users*."

c. **Proposed Rule 39.24(b)(12)** would require a DCO to "[e]stablish one or more market participant risk advisory working groups as a forum to seek risk-based input from a broad array of market participants . . . regarding all matters that could materially affect the risk profile of the [DCO]". This is consistent with our recommendation that "*consultation should be separate from risk committees. . . [so that] all market participants can freely represent the views of their firms and other similarly situated market participants*."

If adopted, these amendments would help move governance standards closer to what we believe is a more appropriately risk-aligned structure. However, there are additional governance standards that we urge the CFTC to continue to consider.

Additional rulemaking still needed

We recommend that the Commission also consider the following additional enhancements, which were also discussed in our White Paper:

a. While proposed Rule 39.24(b)(11) addresses a DCO board's obligation to "consult with and consider and respond to input from, the risk management committees", as stated in our White Paper, there should also be "*a clearly defined process that requires CCPs to obtain and address clearing member and end user feedback and for such feedback to be disclosed to regulators.*" While proposed Rule 39.24(b)(12) contains a requirement for a DCO to obtain clearing member and end user feedback in the proposed risk advisory working groups ("RWG"), there is no requirement for this feedback to be shared with regulators or with the DCO's RMC. For this feedback to be meaningful, a DCO's RMC should be required to consider the feedback obtained at these RWGs. Furthermore, we also believe that a DCO should be required to disclose clearing member and end user feedback to its regulators.

b. The Proposal includes an important Request for Comment relating to market consultation prior to rule changes. To further strengthen the proposed governance changes in the Proposal, we believe additional rulemaking should be introduced on this topic, particularly as it relates to matters that would materially impact the risk profile of the CCP. As outlined in our White Paper, we believe a DCO should be required to "*obtain explicit approval from clearing members before making any rule or methodology changes or introducing novel or complex products that materially affect the risk profile of the CCP*." In addition, we believe sound governance would be facilitated by requiring DCOs to consult with the proposed market participant RWGs prior to relevant rule changes and that the DCO summarize the feedback from such groups in its rule submissions to the CFTC. Given the typically short comment periods related to such rule filings, we believe this type of transparency may facilitate other stakeholders' ability to identify and comment on issues related to the potential rule.

c. An important governance item that has not been included in the Proposal but was a key recommendation in our White Paper is the introduction of default management oversight, which should include "*representation from clearing members whose default fund is at risk and end users who could be negatively impacted in a severe tail scenario.*" While we acknowledge that a DCO must have flexibility within its rules on how to approach each unique default, the market participants who may have to underwrite losses should be represented in the process.

d. Closely related to the default management process, many CCP rulebooks provide the CCP with broad and vaguely defined emergency powers. These open-ended provisions can exacerbate uncertainty for clearing participants in times of extreme volatility or market stress. As recommended in our White Paper, we believe there should be "*rigorous governance and clear limits to emergency powers.*" Emergency powers should be reserved for extreme circumstances, and subject to rigorous governance arrangements and consultation with primary regulators.

e. Lastly, with respect to the Proposal's request for comment regarding RMC member information sharing within their firm, we are supportive of allowing RMC members to obtain feedback from experts within their member firms. RMC agendas span a broad array of risk disciplines, including market, counterparty, operational and liquidity risk. Tapping into these disciplines will enhance the quality of input the DCOs receive from RMC members.

We are encouraged by the CFTC's Proposal to strengthen a DCO's governance practices and consider it a step forward in establishing enhanced risk management standards more broadly.

Nevertheless, we urge the Commission to view DCO governance as a building block and a starting point. There are additional DCO issues that we believe the Commission should address, including new regulatory enhancements governing DCO public disclosures, robust and stable initial margin, and the alignment of incentives through appropriately sized capital.

We appreciate the opportunity to provide our input and look forward to ongoing engagement with the Commission and other market stakeholders to strengthen the overall system. If we may provide further information or answer any specific questions, please do not hesitate to contact us.

Sincerely,

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