



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

September 21, 2023

Re: RIN 3038–AF16, Derivatives Clearing Organizations Recovery and Orderly Wind-Down Plans; Information for Resolution Planning

Dear Mr. Kirkpatrick,

I am writing this letter in response to the recent Notice of Proposed Rulemaking (NPR) that would amend the CFTC’s rule 17 C.F.R. §39.39 governing “Derivatives Clearing Organizations Recovery and Orderly Wind-Down Plans; Information for Resolution Planning.” As you know, the Federal Deposit Insurance Corporation (FDIC) would be responsible for the resolution of a failing derivatives clearing organization (DCO), if the DCO met the requirements for resolution under Title II of the Dodd-Frank Act¹ (Title II). This NPR is of significant consequence to the FDIC’s responsibilities in that regard.

In its resolution planning for DCOs, FDIC staff rely heavily on information contained in the recovery and wind-down plans of the DCOs required by the CFTC under the above-referenced rule. This is important to note, as DCOs, including those that have been designated as systemically important by the Financial Stability Oversight Council, are not required to file resolution plans under §165(d) of the Dodd-Frank Act, unlike other covered financial companies such as bank holding companies.² Ex-ante resolution preparation requires extensive familiarity with a DCO’s structure, rules, operations, and vulnerabilities and includes the evaluation of resolution options, liquidity positions, and resources available to maintain critical clearing functions. We believe that the proposed rule will support the development, execution, and effectiveness of the FDIC’s Title II resolution strategy for DCOs by requiring the DCOs to

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376–2223 (2010) and codified at 12 U.S.C. 5301 *et. seq.*

² See, 12 U.S.C. 5365(d).

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prepare thoughtful and robust recovery and wind-down plans that could inform the FDIC's resolution planning.

Some examples of the improvements in the proposed rule that support resolution planning are: (i) a new definition of "orderly wind-down" that addresses financial stability in wind-down and aligns the definition with a proposed Securities and Exchange Commission rule for securities clearing agencies and the Federal Reserve's Regulation HH, (ii) new §39.39(c)(1) which details how a DCO should identify its critical operations and services and expands the analysis of its operational interconnections and interdependencies, and (iii) new §39.39(c)(2) which details the CFTC's expectations around the scenario planning that is required to be addressed in recovery and wind-down plans. These amendments comprise positive developments that would aid the FDIC in its resolution planning efforts.

However, there is one proposed change contained in the NPR that will make the FDIC's ex-ante resolution planning more difficult. Section 39.39(f) of the proposed rule removes the requirement contained in §39.39(c)(2) of the current rule that DCOs have procedures in place to provide information necessary for resolution planning directly to the FDIC.

We believe that it is critical for the FDIC to have the ability to obtain information for the purposes of resolution planning directly from the covered DCOs, and not to have to rely on the re-transmission of information provided by the DCOs to the CFTC. Given that resolution planning is the sole focus of the FDIC with respect to the DCOs, and the many complexities of planning for and executing a successful resolution, we believe it is most effective and efficient if the DCOs have the ability and processes in place to provide information directly to the FDIC in connection with resolution planning. In addition, the current rule has been in place for many years and we are not aware of any problems with the current rule.

Based on the foregoing, I would like to request that the final rule retain the existing requirement that covered DCOs have procedures in place to provide information needed for resolution planning directly to the FDIC.

I thank you in advance for considering these comments.

Respectively submitted,



Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation