

September 26, 2023

**VIA ELECTRONIC SUBMISSION ([Link](#))**  
**Commodity Futures Trading Commission**  
**Three Lafayette Centre**  
**1155 21st Street, NW**  
**Washington, DC 20581**  
**USA**

**Re: Commodity Futures Trading Commission’s Notice of Proposed Rulemaking on Derivatives Clearing Organizations Recovery and Orderly Wind-down Plans; Information for Resolution Planning**

The Global Association of Central Counterparties (“CCP Global”)<sup>1</sup> is the international association for central counterparties (“CCPs”), representing 42 members who operate over 60 individual CCPs across the Americas, EMEA, and the Asia-Pacific region.

CCP Global appreciates the opportunity to respond to the Notice of Proposed Rulemaking on Derivatives Clearing Organizations Recovery and Orderly Wind-down Plans; Information for Resolution Planning<sup>2</sup> (“the Proposal” or “NPR”) proposed by the Commodity Futures Trading Commission (“CFTC” or “Commission”). All systemically important derivatives clearing organizations (“SIDCOs”) and Subpart C derivatives clearing organizations (“SCDCOs”), which would be subject to the Proposal, are members of CCP Global.

First and foremost, the regulatory framework for implementing resiliency, recovery, and wind-down requirements should be principles- and outcome-based and should prioritize the safety and efficiency of DCOs and support the stability of the broader financial system. Ultimately, the focus should be on risk management practices that mitigate the likelihood of an event leading to the need for recovery or wind-down. Any recovery and orderly wind-down rules should recognize that DCOs’ on-going risk management practices are designed to provide for the continuity of their critical operations and services and support the stability of the broader financial system. To that end, DCOs maintain robust default management plans and business resiliency plans that mitigate the risk that a default or other event would trigger recovery, even where extreme but plausible conditions prevail.

CCP Global is generally supportive of the Commission’s ongoing work to support the stability of the broader financial system. The CFTC’s principles-based regulatory framework, which the Commission

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<sup>1</sup> Previously known as CCP12.

<sup>2</sup> Federal Register, CFTC, Notice of Proposed Rulemaking on Derivatives Clearing Organizations Recovery and Orderly Wind-down Plans; Information for Resolution Planning (June 2023), available at [Link](#).

has established through numerous rulemakings and which includes requirements for recovery and wind-down planning under existing § 39.39, has proven successful over time, including during periods of market stress. Indeed, U.S. DCOs have successfully managed periods of heightened volatility and clearing member defaults and not one U.S. DCO has ever entered recovery or wind-down. In light of that history, CCP Global has serious concerns over the level of prescriptiveness of the Proposal given that it deviates from the Commission's long-standing commitment to a principles-based approach to regulation. As applied to the Proposal, we believe that such an approach continues to be appropriate given the unique characteristics of DCOs and the differing facts and circumstances that may surround a recovery or wind-down event. In particular, a principles-based approach would allow DCOs to leverage their risk management expertise and tailor their recovery and wind-down planning to their unique characteristics, including corporate structure, market participants served, and products cleared.

As described further below, CCP Global fears that the proposed prescriptiveness of the scenario analysis could only lead to inappropriate and overly speculative RWPs to the detriment of designing workable plans. An inherent feature of recovery scenarios is that they would likely be characterized by "unique and unforeseen circumstances"<sup>3</sup>, as rightfully pointed out by the Commission in its Letter 16-61, which requires that DCOs have a certain level of flexibility in designing their recovery plans to affirm they can effectively address the circumstances that would actually characterize a recovery event. More generally, as described further below, DCOs should only be required to address "extreme but plausible" scenarios and should not be required to plan for extreme and implausible scenarios which is the risk in proposing such a prescriptive and inappropriate list of scenarios. Finally, in being so prescriptive, the Proposal introduces requirements that overlap between each other and/or current CFTC regulations. As noted above, it is critically important that the CFTC embrace principles-based regulations consistent with other existing and proposed CFTC regulations. We further urge the CFTC to coordinate with the primary supervisory authorities of dual-registered DCOs to ensure appropriate alignment with the requirements of that primary supervisory authority. This would help to avoid creating conflicting obligations for DCOs whose primary supervisor is not the CFTC and to reduce the burden on DCOs seeking to comply with all applicable regulations.

CCP Global's members also appreciate the importance of transparency and the need for educating clearing members and other stakeholders, including end users, so that they understand how default waterfalls and default management, recovery, and wind-down tools available to CCPs work. Our members already pursue such transparency and education through their extensive rulebooks, public disclosures, and bilateral and industry-wide outreaches.

CCP Global offers the following comments to further detail the manner in which we believe the Proposal deviates from the Commission's principles-based approach and is overly prescriptive and in which it could be improved by allowing more flexibility and discretion for DCOs while still defining requirements for the critical components of RWPs.

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<sup>3</sup> CFTC Letter No. 16-61 (July 2016), available at [Link](#), p. 7.

**CCP Global comments on the selected aspects of the Proposal:**

- **Agreements To Be Maintained During Recovery, where applicable, and Orderly Wind-Down – § 39.13(k)(4) and § 39.39(c)(6)**

The Commission is proposing to require that a DCO's RWP identify any agreements associated with the provision of its critical services and operations that are subject to alteration or termination as a result of the RWP being implemented and describe the actions the DCO has taken to ensure such operations and services will continue during recovery and wind-down. Under the Commission's proposed requirement, the DCO's would ultimately have to review and analyze its agreements to determine if they contain covenants, material adverse change clauses, or other provisions that may render the continuation of the DCO's critical operations and services difficult or impracticable upon implementation of the RWP. The Commission is proposing to require that the DCO take proactive steps to ensure that its critical operations and services would continue in recovery and orderly wind-down as it relates to these agreements. We generally support the proposition that a DCO must be able to identify agreements associated with providing critical services and operations that may be impacted as a result of recovery and wind-down. However, the Commission's requirement that DCOs take proactive steps to ensure that their critical operations and services would continue in recovery and orderly wind-down relative to the services provided under these agreements is likely to present challenges. DCOs may be limited in the steps they may take to employ contingency arrangements with respect to these contracts and even where possible, actions may be overly burdensome, costly, and provide limited benefits. More broadly, even if a DCO takes actions to support the continuity of services under these agreements, it cannot ensure that its critical operations and services will continue.

- **Annual Submission of RWPs – § 39.19(c)(4)(xxiv)**

The Commission is also requiring that all DCOs, upon revising their RWPs (when any material change has been made, but in any event not less frequently than annually), submit the current plan(s) and supporting information to the Commission, along with a description of any changes and the reason(s) for such changes. We support providing RWPs to the Commission, including following any material changes thereto. However, DCOs should not be required to submit RWPs to the Commission on an annual basis absent any material changes. CCP Global recommends this be reflected in any final rulemaking.

Furthermore, we support providing the Commission with supporting information along with the RWP submission, however only to the extent such information is part of the plan itself. This would include appendices, annexes, and other supporting exhibits. This would not include supporting policies and procedures generally related to the DCO's processes. Along these lines, we are concerned that the reference to supporting information may be overly broad, despite the NPR's reference to supporting information as, for example, "an appendix or annex",<sup>4</sup> and therefore, CCP Global recommends the reference to "supporting information" be revised in any final rulemaking.

- **Notice of Initiation of the Recovery Plan and of Pending Orderly Wind-Down – § 39.39(b)(2)**

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<sup>4</sup> CFTC NPR, *op.cit.*, p. 48992.

The Commission is proposing to require that a DCO have procedures in place to notify the Commission and clearing members, as soon as practicable, when orderly wind-down is pending, and to provide such notification in such circumstances. While we support implementation of DCO Core Principle J (Reporting) and DCO Core Principle L (Public Information), the proposed requirement to notify the Commission and clearing members when wind-down is pending may be premature, as the DCO may still be in a position to carry out risk reducing activities and/or delay the invocation of its wind-down plan. Notification of a pending wind-down to clearing members, in addition to the Commission, may also frustrate a DCO's ability to carry out these functions and may result in increased risks to the DCO's clearing members, as well as the broader financial system. We also believe that the proposal to notify clearing members when a wind-down is pending undermines the ability of supervisory agencies to ensure that a wind-down is orderly, especially given the fact that such supervisory agencies are uniquely positioned to effectively share and communicate such information.<sup>5</sup> Therefore, CCP Global has serious concerns regarding the proposed notification requirement when wind-down is pending, notably to clearing members, and recommends that it not be adopted in any final rulemaking.

- **Critical Operations and Services, Interconnections and Interdependencies, and Resilient Staffing Arrangements – § 39.39(c)(1)**

Under the proposed § 39.39(c)(1), in their RWP, DCOs are obliged to identify and describe “the service providers upon which the derivatives clearing organization relies to provide these critical operations and services, including internal and external service providers and ancillary services providers”<sup>6</sup> and to identify and describe “financial and operational interconnections and interdependencies”<sup>7</sup>. We think the drafting of these provisions, which references service providers and separately interconnections and interdependencies, may be confusing, since, in part, service providers are a type of interconnection.

Moreover, the Commission is proposing that RWP identify and describe, amongst other items, “obstacles to success of the recovery plan and orderly wind-down plan”<sup>8</sup> and “plans to address the risks associated with the failure of each critical operation or service”<sup>9</sup>. While CCP Global agrees that the objective of the RWP is to identify scenarios that could threaten the viability of a DCO's critical operations and services as a going concern and to plan for recovery and wind-down, we fear these requirements could be interpreted as seeking information that is overly speculative in nature. The main objective of a DCO's RWP is to outline actions that promote the continuity of the DCO's critical operations or services, taking into account reasonably foreseeable obstacles and risks. The inclusion of the provisions of 39.39(c)(1) identified above therefore appears to seek either duplicative information or speculation on risks and obstacles that are necessarily *beyond* the scope of those reasonably identified risks and obstacles that dictate the choices of tools and actions that comprise the core of the RWP. We are concerned that focusing on such speculative items could divert the focus

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<sup>5</sup> By way of contrast, the SEC's “Covered Clearing Agency Resilience and Recovery and Wind-Down Plans” proposed rule, in particular 17Ad-26(a)(7), would require notification as soon as practicable when the covered clearing agency is considering initiating a recovery or orderly wind-down. The SEC further notes that, as a supervisory agency, it is uniquely situated to effectively share and communicate information regarding a potential wind-down with other regulatory authorities.

<sup>6</sup> CFTC NPR, *op. cit.*, p. 49006.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

away from the core aspects of recovery and wind-down planning. Therefore, CCP Global recommends that the above-mentioned provisions not be adopted in any final rulemaking.

- **Recovery Scenarios and Analysis – § 39.39(c)(2)**

The Proposal is particularly prescriptive and significantly deviates from the Commission’s principles-based approach as it relates to the scenarios and the scenarios analysis. The Commission is currently proposing a list of eleven scenarios that must be considered in the SIDCO’s or SCDCO’s recovery planning under proposed § 39.39(c)(2)(ii). The Commission is also proposing that an impacted DCO must include a combination of at least two scenarios involving multiple failures particularly relevant to the DCO’s business. There are significant differences among DCOs, including differences in clearing members, services, products cleared, and ownership structure, among other areas. Given this, the risks that each DCO faces inherently differ and thus each DCO itself is best placed to identify and analyze the scenarios that could potentially materialize and would need to be considered in its recovery planning. For example, in the case of non-default losses (“NDLs”), which are very heterogenous in nature, the specific NDL-related risks may present themselves differently at individual DCOs which results in appropriately diverse practices employed by DCOs for addressing NDLs. DCOs should have the flexibility to focus on a set of scenarios that are most meaningful to their risk profile and most relevant to their offering. We believe, in part, the Commission recognizes this given that the NPR states that a DCO may determine that a scenario is not possible in light of its activities.<sup>10</sup> The recognition that some scenarios may not be applicable to a DCO in the NPR seems to conflict with the Proposal’s enumerating specific scenarios for a DCO to consider in recovery planning.

In addition, a DCO must be able to account for its business-as-usual risk management practices in evaluating scenarios as a part of its recovery planning, which in many cases, particularly for NDLs, significantly mitigate the likelihood of an event triggering a DCO’s recovery. Where this occurs, a DCO should not be required to arbitrarily consider a scenario relating to such risk in its recovery planning, which could result from the Proposal’s requiring analysis of specific scenarios under proposed § 39.39(c)(2)(ii). Broadly, CCP Global believes that meaningful recovery scenarios are those that are extreme but plausible and that could ultimately threaten the viability of the DCO’s critical operations and services, considering its unique risk profile and risk management practices. A requirement to focus on scenarios beyond this scope would inappropriately require DCOs to dedicate staff time and resources to analyzing scenarios that are extreme and implausible, which would take the focus away from scenarios that *could* result in recovery. For example, we are concerned that the NPR inappropriately requires recovery scenario analysis that focuses on settlement bank, custodian, and depository bank failures. Such scenarios are extreme and implausible, as well as being generally inappropriate. In particular, CCP Global reiterates previous comments we have made<sup>11</sup> that it is inappropriate for DCOs to effectively be required to act as guarantors for the failure of third-party settlement banks, custodians, and depositories. These scenarios are also inherently implausible given that the key objective of policymakers’ work following the 2008 financial crisis was to provide for the continuity of banks’ critical services, including settlement and custody services. Hence, we strongly

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<sup>10</sup> *Ibid.*, p. 48978.

<sup>11</sup> CCP12, Response to FSB consultative document entitled “Guidance on finance resources to support CCP resolution and on the treatment of CCP equity in resolution” (July 2020), available at [Link](#).



believe that DCOs should retain the necessary flexibility in defining the scenarios they will consider in recovery planning to ensure they are appropriately tailored to their characteristics and the markets they serve and are “extreme but plausible”.

With reference to proposed § 39.39(c)(2)(i), we also believe the analysis that should be provided for each scenario in the recovery plan is overly broad and prescriptive. While CCP Global recognizes the importance of establishing an effective recovery plan, it fears that the specific aspects underpinning the analysis proposed by the Commission would be counter-productive and introduce unnecessary complexity to the RWPs. Given the prescriptive nature of the requirement that each scenario be analyzed and included in the recovery plan, the risk is that such analysis diverts focus away from the scenarios that could trigger recovery and ultimately, away from identifying tools and resources to address these scenarios and provide for continuity of a DCO’s critical operations and services. This is particularly true given the fact that a scenario that actually triggers a DCO’s recovery is highly likely to be unique and triggered by unforeseen circumstances. Focusing on identifying and describing all the various aspects of a given scenario in a DCO’s recovery plan could result in a plan that is not as readily usable, as it may not appropriately recognize the varying circumstances that *could* arise in a recovery event, which would be contrary to the intent of the Commission’s Proposal.

Finally, we think the provisions under points (D) (i.e., “the market conditions and other relevant circumstances that are likely to result from the scenario”<sup>12</sup>) and (E) (i.e., “the potential financial and operational impact of the scenario on the derivatives clearing organization and on its clearing members, internal and external service providers and relevant affiliated companies, both in an orderly market and in a disorderly market”<sup>13</sup>) would not only require DCOs to provide overly speculative information, which would be of limited, if any, value, but also would not likely be applicable in an actual recovery event given the unique circumstances of such an event. Such speculative analysis, coupled with the prescriptive list of scenarios expected to be considered by a DCO, could potentially distract it from the main objective of recovery planning and pose the risk that such analysis digresses too much from more plausible matters that should be the focus of RWPs.

For the above reasons, CCP Global recommends that the Commission reconsider its prescriptive approach under proposed § 39.39(c)(2) in any final rulemaking, including not adopting the specific scenarios enumerated under § 39.39(c)(2)(ii). In addition, for the same reason as outlined with respect to § 39.39(c)(2)(ii), CCP Global also recommends that the Commission not adopt the proposed definition of “non-default losses” under § 39.2. CCP Global also believes that the proposed definition read in conjunction with the enumerated scenarios in § 39.39(c)(2)(ii) would lead to confusion since the scenarios specified do not align entirely with the definition.

- **Recovery and Orderly Wind-down Triggers – § 39.39(c)(3)**

As currently drafted, proposed § 39.39(c)(3) would require SIDCOs and SCDCOs to describe in their RWPs the criteria that may trigger implementation or “consideration of implementation” of their RWPs. CCP Global is concerned with the potentially overlapping nature of what this proposal would require these DCOs to describe in their RWPs with what is already described in their risk management

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<sup>12</sup> CFTC NPR, *op.cit.*, p. 49006.

<sup>13</sup> *Ibid.*

frameworks. For example, “consideration of implementation” could encompass practices that are already well-defined under a DCO’s policies and procedures for its on-going risk management practices, which could result in confusion and unnecessary duplication. Indeed, given the ambiguity of the term, responsible oversight and administration by DCOs at a very early stage could be inappropriately construed as “consideration of implementation” of the RWPs. Therefore, we believe the Proposal should only introduce a requirement to describe triggers for the actual implementation of the RWP which would provide for more certainty as to when to implement the RWP.

- **Recovery Tools – § 39.39(c)(4) and Orderly Wind-down Scenarios and Tools – § 39.39(c)(5)**

With respect to the requirements applicable to recovery tools under proposed § 39.39(c)(4), the Proposal suggests that a DCO’s recovery plan should include “(ix) an assessment of the likelihood that the tools, individually and taken together, would result in recovery”<sup>14</sup> and “(x) an assessment of the associated risks from the use of each such tool to non-defaulting clearing members and those clearing members’ customers with respect to transactions cleared on the derivatives clearing organization, linked financial market infrastructures, and the financial system more broadly.”<sup>15</sup> With respect to the requirements applicable to wind-down tools under proposed § 39.39(c)(5), the Proposal similarly suggests that a DCO’s orderly wind-down plan should “(ix) provide an assessment of the likelihood that the tools, individually and taken together, would result in orderly wind-down; and (x) provide an assessment of the associated risks from the use of each such tool to non-defaulting clearing members and those clearing members’ customers with respect to transactions cleared on the derivatives clearing organization, linked financial market infrastructures, and the financial system more broadly.”<sup>16</sup>

For similar reasons as those outlined in CCP Global’s comments on proposed § 39.39(c)(1), CCP Global is concerned with the overly broad and speculative nature of these proposed requirements and questions their usefulness. We would also like to highlight that the main purpose of the RWP is to design tools that are viable to implement recovery and wind-down and it would not necessarily be useful to provide for a tool in the RWP that would not be designed to result in recovery or orderly wind-down. Concerning point (x) under proposed § 39.39(c)(4) and (5), CCP Global would like to emphasize that it seems overly broad, as it extends to clearing members’ customers, linked financial market infrastructures, and the financial system more broadly and not all tools would necessarily impact these parties directly. For these reasons, CCP Global recommends that points (ix) and (x) under proposed § 39.39(c)(4) and (5) not be adopted in any final rulemaking.

- **Governance – § 39.39(c)(7)**

Broadly, CCP Global finds the current requirements for DCOs with respect to governance under § 39.24 are appropriate and considered in the context of a DCO’s recovery and wind-down planning today. In fact, current § 39.24(b)(10)(iii) even references that a DCO shall have governance arrangements that assign responsibility for implementing RWPs required by § 39.39. Generally, the requirements under proposed § 39.39(c)(7) appear to overlap with the obligations under § 39.24 and, at times, are more

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<sup>14</sup> *Ibid.*, p. 49007.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

prescriptive. We agree with the CFTC's recognition in the NPR that, "in order to develop thorough plans, and to be prepared to implement those plans effectively, a SIDCO or Subpart C DCO must implement and maintain transparent governance arrangements related to recovery and wind-down that are consistent with the above standards and that recognize "one size does not fit all."<sup>17</sup> This is already achieved under § 39.24 and in particular, CCP Global finds that the provisions under § 39.24 already provide DCOs the ability to design governance arrangements for their RWPs that are tailored to their unique organizational structures, while ensuring that these arrangements are appropriately defined for RWPs. As such, in conjunction with the reasons set forth below, CCP Global recommends that the Commission does not adopt proposed § 39.39(c)(7) in any final rulemaking.

We would also like to express our concern relative to the provision proposed in § 39.39(c)(7)(iii) which requires DCOs to "describe the processes that the derivatives clearing organization will use to guide its discretionary decision-making relevant to each plan."<sup>18</sup> Discretion is key in the successful implementation of RWPs, as it allows DCOs to swiftly adopt appropriate decisions consistent with their obligations under § 39.24 that notably require a DCO to "place a high priority on the safety and efficiency of the derivatives clearing organization"<sup>19</sup> and "[e]xplicitly support the stability of the broader financial system and other relevant public interest consideration of clearing members, customers of clearing members, and other relevant stakeholders"<sup>20</sup>. In light of the existing principles- and outcome-based CFTC framework, DCOs currently exercise discretion where necessary under their governance arrangements which are appropriately defined under § 39.24. To the extent that the Commission is suggesting some alternative set of principles for guiding the use of discretion pursuant to an RWP, that would seem problematic, as it could inadvertently hamper the necessarily swift decision-making and add unnecessary complexity in a time of crisis. We would therefore once again urge the Commission to rather rely on the provisions of § 39.24 in this context.

Similarly, the requirement in proposed § 39.39(c)(7)(iv) for each SIDCO and SCDCO to "[d]escribe the derivatives clearing organization's process for identifying and managing the diversity of stakeholder views and any conflict of interest between stakeholders and the derivatives clearing organization" raises concerns. This requirement may reduce the effectiveness and certainty of managing a recovery or wind-down event, which is counter to the goal of establishing an RWP in the first place. We believe the more appropriate focus for the governance arrangements of RWPs with respect to considering stakeholder views is the one that is already embraced under current CFTC regulations. In particular, as referenced above, CCP Global believes that a DCO's governance arrangements with respect to its RWPs should be consistent with the obligation under § 39.24 that a DCO's governance arrangements "[e]xplicitly support the stability of the broader financial system and other relevant public interest considerations of clearing members, customers of clearing members, and other relevant stakeholders."<sup>21</sup> It is paramount that this continue to be at the core of a DCO's governance arrangements, including with respect to recovery and wind-down planning. Moreover, requirements under proposed § 39.39(c)(7)(iv) could be in conflict with this principle to the extent stakeholder views

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<sup>17</sup> *Ibid.*, p. 48982.

<sup>18</sup> *Ibid.*, p. 49007.

<sup>19</sup> Part 39 – Derivatives Organizations, § 39.24(a)(1)(iii), available at [Link](#).

<sup>20</sup> *Ibid.*, § 39.24(a)(1)(iv).

<sup>21</sup> *Ibid.*



do not align with the obligations under § 39.24.

Additionally, from a practical perspective, while CCP Global agrees that stakeholder views could be considered in establishing tools that directly impact stakeholders, to the extent that this requirement may be understood as contemplating a process for stakeholder negotiations *during* the implementation of RWPs, it could be counterproductive and even detrimental to a DCO's recovery or orderly wind-down. It could inadvertently slow down or stall the process in the event that stakeholders have diverging views. Also, different stakeholders could be driven by different interests, especially in extreme market conditions, which could negatively impact the incentives which many recovery tools depend on and thereby hamper the success of the RWP implementation. Furthermore, it is unclear to CCP Global how such a process would function in practice given that SIDCOs and SCDCOs already have well-established rules-based provisions for using specific tools under their RWPs, which have already been subject to review through the CFTC rule filing process.

As such, in conjunction with the reasons outlined above, CCP Global recommends that the Commission not adopt proposed § 39.39(c)(7). To the extent the Commission determines, notwithstanding the above, to retain § 39.39(c)(7) in the final rule, we note that § 39.39(c)(7)(i), the prescribed requirement for annual reviews of the RWPs by the board of directors, seems overly excessive and burdensome. Instead, we would suggest that the DCO remains flexible to determine the most appropriate governance arrangements for the approval of the RWP. Each DCO, given its activities and structure, is best placed to determine the interval at which its board of directors should review and approve the RWP such as when material changes are introduced to the RWP or to the DCO's products, service offerings, or any other significant aspect of the DCO's functioning.

- **Testing – § 39.39(c)(8)**

CCP Global agrees that it is critical that DCOs are confident that their RWPs would be effective in an actual recovery or orderly wind-down event. Default management and business continuity testing exercises, in conjunction with the regular review of a DCO's RWP, provide effective means to affirm that a DCO has appropriate procedures and structures in place to support the continuity of its critical services in accordance with its RWP and, where applicable, identifies and makes any necessary enhancements to its RWP. DCOs must retain the flexibility to determine how RWP testing should be conducted, including whether and how to include clearing members and other external stakeholders, based on what the DCO determines is necessary and appropriate to supporting the ongoing viability and comprehensiveness of its RWP.

RWP testing may be comprised of various types of exercises and DCO may determine it is appropriate to leverage the testing of its default management plans and business continuity plans, which is already required pursuant to CFTC regulations. Therefore, any final rule should make clear that a DCO has the discretion to rely on these testing practices to satisfy proposed § 39.39(c)(8). It is reasonable to expect that different practices would be employed to test different aspects of a DCO's RWP, such as table-top exercises that may be conducted with or without the participation of clearing members and other external stakeholders. Notably, there are various other ways in which clearing members and other stakeholders can be educated on a DCO's recovery and orderly wind-down processes; direct participation in testing of the RWP is not necessarily the most effective way to do so. Moreover

requiring such participation may distract the DCO from optimizing its RWP testing, as well as divert the focus of clearing members away from the core risk management practices that mitigate the likelihood of recovery occurring in the first place.

More broadly, tests that include clearing members and other stakeholders may not be appropriate or beneficial for aspects of a DCO's RWP that do not directly impact clearing members and other stakeholders. These aspects of a DCO's RWP – and the testing of them – can also involve confidential and highly sensitive information that could make inclusion of clearing members and other stakeholders inappropriate. Furthermore, flexibility is necessary to the extent a DCO's RWP includes legal processes that do not lend themselves to standardized operational testing processes (e.g., entering into asset sale agreements pursuant to orderly wind-down planning).

In light of the above, CCP Global requests that the Commission make clear that with regards to testing the DCOs' RWPs, a DCO may retain the discretion to determine what that testing would be comprised of and, for the avoidance of doubt, should not require any participation of clearing members or other stakeholders. The Commission should therefore ensure, within the context of satisfying the objective of demonstrating "whether a SIDCO's or Subpart C DCO's tools and resources will sufficiently cover financial losses resulting both from participant defaults and non-default losses and whether these DCOs' rules, procedures, and governance facilitate a viable recovery or orderly wind-down"<sup>22</sup>, that DCOs have the discretion to determine whether testing of any particular aspect of their RWPs is necessary or feasible.

- **Data for Resolution Planning – § 39.39(f)**

The requirements under proposed § 39.39(f) for maintaining and providing data for purposes of resolution planning and during resolution seem unnecessarily burdensome, particularly as they relate to proposed § 39.39(f)(7). CCP Global is concerned that, absent any defined processes or constraints on the scope and frequency of information requests, SIDCOs and SCDCOs may be subject to numerous, voluminous requests for data from the Commission to provide to the Federal Deposit Insurance Corporation ("FDIC"), a regulator by which they are not regulated. In particular, the requirement in proposed § 39.39(f)(7) to include "[a]ny other information deemed appropriate to plan for resolution under Title II of the Dodd-Frank Act"<sup>23</sup> renders the proposed list of potential information requests in § 39.39(f)(1)-(6) irrelevant and can lead to requests that could easily become unnecessarily burdensome, given the potential scope of such information request. We would also like to point out that as a result of the proposed information sharing requirement very sensitive information may be transmitted between, and maintained at both, CFTC and FDIC, increasing information security concerns which would have to be carefully addressed. For these reasons, CCP Global requests that the Commission reconsider the requirements under proposed § 39.39(f) in any final rulemaking, particularly its broad nature. If the Commission does determine to adopt some form of proposed § 39.39(f), we urge the Commission to increase the clarity and to reduce the burdens of the provision by not adopting proposed § 39.39(f)(7).

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<sup>22</sup> CFTC NPR, *op. cit.*, p. 48982.

<sup>23</sup> *Ibid.*, p. 49008.

## About CCP Global

CCP Global is the international association for CCPs, representing 42 members who operate over 60 individual central counterparties (CCPs) across the Americas, EMEA, and the Asia-Pacific region.

CCP Global promotes effective, practical, and appropriate risk management and operational standards for CCPs to ensure the safety and efficiency of the financial markets it represents. CCP Global leads and assesses global regulatory and industry initiatives that concern CCPs to form consensus views, while also actively engaging with regulatory agencies and industry constituents through consultation responses, forum discussions, and position papers.

For more information, please contact the office by e-mail at [office@ccp-global.org](mailto:office@ccp-global.org) or through our website by visiting [www.ccp-global.org](http://www.ccp-global.org).

## CCP Global MEMBERS

