



October 11, 2022

Mr. Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette center
1155 21st St. NW
Washington, DC 20581

Dear Mr. Kirkpatrick,

The Futures Industry Association (“FIA”) welcomes the opportunity afforded by the Commodity Futures Trading Commission (“Commission” or “CFTC”) to provide comments on the proposed governance requirements for Derivatives Clearing Organizations (“DCOs”) rulemaking (“the Proposal”).

The Proposal would establish DCO governance requirements which have been, to some extent, already incorporated into most DCOs’ governance frameworks and are already required in other major jurisdictions. The Proposal is a welcome development to ensure an appropriate level of engagement with DCO’s stakeholders and provides several governance fora to consult and consider DCO’s stakeholders’ views and inputs on matters that could materially affect the risk profile of the DCO. As part its mission, FIA supports development of robust and transparent governance arrangements which promote DCOs’ engagement with their members and customers and therefore our position generally aligns with the Commission’s Proposal.

FIA commends the CFTC for its work, and we view the Proposal as a positive development in enhancing governance of DCOs. It was acknowledged during the 27th of July open meeting that the proposed rules establishing Risk Management Committees and Risk advisory Working Groups reflected existing DCOs practices and the Proposal aims to codify such practices. We would like to draw the Commission’s attention to the fact that adoption of the two specific items which the Commission might adopt in the future, market participant consultation prior to rule change and RMC member information sharing within the firm to obtain expert opinions, would substantially improve DCOs’ governance as recommended by market participants in the Commission’s MRAC Subcommittee on CCP Risk and Governance.

I. Relevant Background

A. FIA and its Members

FIA is the leading global trade organization for the futures, options, and centrally cleared derivatives markets. FIA’s mission is to support open, transparent, and competitive markets; protect and enhance the integrity of the financial system; and promote high standards of

BRUSSELS Office 621, Square de Meeûs 37, 1000 Brussels, Belgium | Tel +32 2.791.7571

LONDON Level 28, One Canada Square, Canary Wharf, London E14 5AB | Tel +44 (0)20.7929.0081

SINGAPORE One Raffles Quay, North Tower, Level 49, Singapore 048583 | Tel +65 6662.5782

WASHINGTON, DC 2001 K Street, NW, Suite 725, North Tower, Washington, DC 20006 | Tel +1 202.466.5460

professional conduct. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from more than 48 countries, as well as technology vendors, lawyers and other professionals serving the industry. FIA's governance consists of firms that operate as clearing members in global derivatives markets, including firms registered with the CFTC as FCMs, and this letter principally represents their views.

Throughout its history, FIA has deployed its collective member expertise to provide comment and feedback on a range of suggestions and improvements to the derivatives clearing system, ensuring that the mission of the Commodity Exchange Act ("CEA") is fulfilled. We are pleased to have worked with the CFTC and with other regulators regularly to strengthen the clearing system through embracing improvements and evolving rules. We provide these comments in the same spirit.

B. The Proposal

We understand the Proposal expands upon existing rules and requires DCOs to establish and consult with one or more Risk Management Committees (RMCs) comprised of clearing members and customers of clearing members on matters that could materially affect the risk profile of the DCO. In addition, the Commission proposes establishing minimum requirements for RMC composition and rotation, and requiring DCOs to establish and enforce fitness standards for RMC members. The Commission also proposes requiring DCOs to maintain written policies and procedures governing the RMC consultation process and the role of RMC members. Finally, the Commission is proposing to require DCOs to establish one or more market participant risk advisory working groups (RWGs) that must convene at least quarterly, and adopt written policies and procedures.

We also note this proposal aligns with the DCO Core Principle O of the Commodity Exchange Act which requires a DCO to establish governance arrangements that are transparent, fulfill public interest requirements, and permit the consideration of the views of owners and participants. FIA and its members have reviewed the Proposal considering existing practices amongst DCOs and the European regulatory regime.

II. FIA's comments

A. Establishment and Consultation of RMC – § 39.24(b)(11)

The objective of the proposed RMC requirements is to provide a consistent, formalized process applicable to all DCOs to solicit, consider, and address input from clearing members and end-users before making decisions that could materially affect the risk profile of the DCO.

The Commission requests comment on 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?

FIA recommends that rules on when to consult regarding clearing new products should be principles based and should specify factors to consider when determining if the new product should be consulted upon. We believe overly prescriptive rules in this area might impose excessive time and resources burdens for DCOs and stakeholders to implement with only potentially limited benefits.

We agree with the Commission that before listing a new product, the DCO should consider whether the product could materially affect the risk profile of a DCO. A clear definition of which new products affect the material risk of a DCO is imperative and, therefore, we recommend the Commission set forth a number of factors for the DCO to consider in determining which products require consultation. We agree with the proposed factors identified in the question: A DCO must consult if the product has different margining, liquidity, default management, pricing or other risk characteristics from products already cleared. However, in addition to these factors, FIA recommends also including factors from the opinions¹ published by the European Securities and Markets Authority (“ESMA”). We believe these factors below are valuable additions in determining what constitutes a new product :

- a. based on a new set of risk factors or indicators; and/or
- b. involving the development or implementation of new: i) default fund; ii) stress scenarios; iii) pricing model, pricing histories, procedures detecting pricing uncertainties or ensuring reliable settlement prices, data used as input to risk models, or changes in the risk calculation or risk parameterization modules or operational or organizational developments linked to the change; iv) delivery/settlement procedures, including the settlement of a new currency.

Finally, the Proposal mentions “a DCO should consider the product’s potential impact as the product matures, and not only at the onset of trading, when risks may be less pronounced.” While we agree with the general approach, we recommend such consideration not to be limited only to new products but also to existing products as well.

Beyond new products and more generally, FIA recommends that the rule should also require the RMC to review all risk matters that could materially affect the DCO’s risk profile, including, but not limited to, margin model, default procedures, participation requirements, risk monitoring

¹ ESMA Opinion on Article 15 and 49: Common indicators for new products and services under Article 15 and for significant changes under Article 49 of EMIR

practices, the clearing of new products, outsourcing function, system safeguards, access models, liquidity risk, financial resources and non-default procedures. In addition, based on EU regulation and CPMI-IOSCO 2017 guidance², we recommend the RMC to have a standing item as part of its agenda covering at least the following: stress testing results, sensitivity analysis, stress test scenarios review, backtesting results, collateral composition, and financial resources. Such information should be disclosed in a way that does not breach participants' confidentiality and provides RMC members supporting materials promoting education and engagement and foster transparency and good risk management practice.

We recommend that proposed Regulation 39.24(b)(11) be amended so that "all matters that could materially affect the risk profile of the DCO" not only include the DCO's "margin model, default procedures, participation requirements, and risk monitoring practices, as well as the clearing of new products," as the Commission proposed, but also include, "outsourcing function, system safeguards, access models, liquidity risk, financial resources and non-default procedures."

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

The Commission requests comment on whether DCOs should be required to create and maintain minutes or other documentation of RMC meetings.

We support the Commission requiring DCOs to create and maintain minutes or other documentation of RMC meetings. We understand that this is best practice and already followed by most DCOs. We recommend that the RMC minutes and inputs are presented to the DCO's board for consideration in their decision process.

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

The Commission proposes to require a DCO to maintain policies to make certain that an RMC includes representatives from clearing members and customers of clearing members.

The Commission requests comment on whether it should adopt additional specific composition requirements, and if so, what those requirements should be.

FIA agrees that an RMC should be composed of clearing members and customers of clearing members. Both bring a different perspective but share common incentive for a DCO to have robust and sound risk management practices.

The composition of the RMC membership should be fair and based on skills and expertise. Note that given the clearing members' direct exposure to the risk of the CCP, they typically have numerous people, if not teams, devoted to CCP risk management. Given this, clearing members likely have staff with appropriate level of experience, skills, and knowledge of DCO's activities.

² <https://www.bis.org/cpmi/publ/d163.pdf>

In addition, the Proposal remains silent with regard to DCO representation, independent directors' representation and who should serve as chair of RMCs. We recommend the Commission consider including DCO representatives, at least the President (or its designee) and the Chief Risk Officer and a number of independent directors with the appropriate level of skills and expertise. DCOs may want to include others by invitation so long as the DCO representatives and guests attend in a non-voting capacity. Furthermore, we recommend that the Commission consider that the chair of the RMC be an independent director reporting to the DCO's Board. Under the EU legislation³, the chair of the RMC is required to advise in a non-biased manner the Board based on the RMC inputs. FIA suggests the chair of the RMC be empowered to vote and that no group represented (clearing members, customers of clearing members, DCO and independent directors) have a majority.

Finally, we note that the Proposal has a requirement for quarterly RWG meetings but there is no such minimum meeting scheduled for the RMC. Given the importance of the RMC within the governance arrangements of a DCO, we recommend that the RMC convene at least as often as the RWG on a quarterly basis. Ad hoc meetings should also take place when changes in market or the DCO may necessitate a more frequent meeting. Furthermore, we recommend the DCO to provide regular written risk report to RMC members between meetings.

D. Rotation of RMC Membership – § 39.24(b)(11)(iii)

The Commission proposes to require a DCO to maintain policies to make certain that membership of an RMC is rotated on a regular basis. The Commission requests comment on whether it should set a minimum frequency for RMC membership rotation, what are the advantages and disadvantages of doing so, and, if it does, what that frequency should be.

FIA recommends the terms for the RMC members be on a staggered rotation system which allows for new members while still retaining institutional knowledge. We think there is value to having knowledgeable members on for multiple years while recognizing that everyone should, at some point, rotate off the RMC.

Such rotation allows a broader range of clearing members and their customers the opportunity to be part of the RMC and provide new and different perspectives in relation to DCO's risk matters. However, input provided by committee members via RMC or other governance channels requires a high level of understanding of the DCO business and its operations as well as, more broadly, a deep knowledge of the clearing systems and its interconnections to the wider market. Such experience and knowledge usually take considerable time and resources to develop.

With this background, we do not support a minimum number of years for renewal of terms, specifically the terms of the RMC should not restrict or limit appointed members' tenure. However, we do support DCOs defining transparent criteria for RMC membership (such as clearing expertise, market and asset class expertise, etc.) and rotating on the basis of these relevant

³ Article 28(1) of 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)

criteria. Additionally, the DCO must provide a channel for clearing members and their customers to express interest in becoming an RMC member.

E. Establishment of Risk Working Group (“RWG”) to Obtain Input – § 39.24(b)(12)

The Commission recognizes RMC membership may constitute a significant time commitment. By contrast, an RWG as an advisory working group, would require a smaller time commitment from participants.

The Commission is proposing to require DCOs to establish one or more RWGs, and to maintain policies and procedures regarding the formation and role of each RWG.

The Commission requests comment on whether the proposed requirement that each RWG convene quarterly is the appropriate frequency. The Commission also requests comment on whether it should require DCOs to document the proceedings of RWG meetings, considering both the transparency and accountability benefits of such a requirement and the potential impact of a documentation requirement on free and open dialogue.

FIA supports the Commission’s proposed quarterly frequency of RWG meetings and supports the requirement that the DCO documents the proceedings of RWG meetings. We do not believe such requirement will “chill” discussion within the RWG but rather facilitate a record of matters discussed and general feedback provided. Such documentation must be provided to the RMC as an input for consideration. We agree with the Commission’s note that the firms represented at the RWG should provide risk-based feedback, however, firms represented should also use this forum to provide views without being limited to the same fiduciary standard that exist in the RMC. We view this forum as mainly one to provide transparency to the market participants and engage in open dialogue so the DCO obtains the views of its members and their clients. This should not necessarily be established to duplicate the RMC in its formality. The objective of such forum still remains clear, it is to enhance and strengthen the DCO’s risk management practices based on views from a broader set of market participants.

Furthermore, we recommend that RWG should convene ad hoc if events lead to material changes to the DCO’s risk profile such as significant market volatility or new regulatory requirements. Finally, RWG in its advisory capacity, should be a forum to discuss any changes that have a material risk impact, whether they are DCO’s rule changes or revisions to methodologies or frameworks.

Given the frequency of DCO’s rule changes and circulars, an RWG might prove useful in keeping DCOs, clearing members and customers informed and DCOs might benefit from their feedback.

F. Fitness Standards for RMC Members – § 39.24(c)(1)

Note FIA agrees with the addition of fitness standards for RMC members.

G. Role of RMC Members as Independent Experts – § 39.24

The Commission requests comment on whether requiring RMC members to act as independent experts, neither beholden to their employers' commercial interests nor acting as fiduciaries of the DCO raises any potential legal issues for those members. Specifically, as a matter of corporate law, would RMC members be forced to contend with competing duties or obligations to the DCO and their employer, including any duties or obligations that would foreclose RMC participation? If so, how may the goal of receiving independent, expert opinions be achieved? Should DCOs be required to have policies specific to RMC members for managing conflicts of interest?

DCOs have governance specific to their corporate make up that is governed by applicable corporate laws and RMC members, as employees of their firm, may have certain duties to their employer. However, we do not think this raises any competing duties or obligations with RMC participation. We believe RMCs can serve valuable risk management roles. RMC's participant clearing members and customers are well-suited for risk input without requiring fiduciary obligations that may conflict with their individual employment.

Nevertheless, we believe clear rules on expectations and roles will help participants provide appropriate input. DCO RMCs should be consulted on DCO policies and procedures that relate to risk, such as membership criteria. However, the DCOs must carefully consider conflicts with member firms when dealing specifically with new clearing member approvals. When admitting a specific new member, the DCO must consider whether this is something for the RMC to consider or if the better process is for the RMC to consider policies and procedures for membership, not necessarily the approval of the member. Separately, we also suggest that DCOs establish conflict of interest policies provisions for RMC members to recuse themselves in certain specific circumstances. For instance, where disciplinary actions are being discussed on a clearing member who is also an RMC member, it is expected that this RMC member should recuse himself/herself.

H. Market Participant Consultation Prior to a Rule Change (RFC)

The Commission requests comment on whether it should also require a DCO to consult with a broad spectrum of market participants prior to submitting any rule change. 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? 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?

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?

Consultation prior to submission to the CFTC provides value for DCOs and market participants. Given the interconnectedness of the clearing system, rule changes can have broad impact and should be analyzed for material impact to all potentially affected parties. Specifically, the DCO should consult with a broad range of participants such as clearing members and their customers. DCOs might also consider consulting with existing forums such as committees with external representations. Where appropriate the DCO should also consider consulting with vendors and critical third parties.

Given the potential for wide impact, DCOs should seek some level of consultation for rule changes that could materially impact clearing members and their operations. For example, a rule change that may impact an FCMs’ closeout netting analysis could materially impact clearing members and, therefore, DCOs must consult with market participants before self-certifying the rule to the CFTC. Similarly, a rule that impacts internal FCM operations such as changes to margin transfer timing, could materially impact clearing members. We understand that the DCO might not be in a position to assess with certainty if the rule change materially impacts these interested parties and their downstream processes. Therefore, we urge the Commission to state that the DCO should seek consultation if there is any doubt about impact of the rule.

Furthermore, DCOs should review all feedback and document the rationale for not accommodating opposing views. We note that a European DCO applies these guidelines on a voluntary basis, and we see this process as best practice. DCO rules are typically very technical. Commenting on these rules takes resources, time and effort from market participants, thus naturally preventing a flurry of excessive and/or irrelevant responses. In such case, the DCO can quickly provide its rationale for not accommodating the feedback, if that is indeed the result. In order to facilitate such review and engagement, we recommend that any rule change proposal should contain, as an annex, a template with all relevant areas of interest (such as margin model, Default fund, Collateral, third party functions, legal etc.) and a short description where changes might be material and an associated field for a response. This would help consulted parties to easily assess if a response is required and for the DCO to process reviews in a more efficient and consistent way.

Finally, we would welcome the Commission to consider reviewing the self-certification process. Indeed, this process is relatively opaque as there is limited information on the impact of the proposed changes and limited time for interested parties to assess such impact and share issues of concern (i.e., 10 days). Rule 40.6(c)1 provides several circumstances where the Commission can

stay self-certification period. We recognize that the Commission can stay a rule if it is novel or complex, FIA recommends that beyond novel or complex, the Commission should also include the power to stay a rule if it has a material impact. We would recommend that rule changes that are novel, complex or have a material impact should be subject to a minimum of 30 days' notice period.

I. RMC Member Information Sharing with Firm to Obtain Expert Opinions

The information provided to a DCO's RMC is often confidential and the value of the enhanced input must be weighed against the increased risk of disclosure in allowing confidential information to be shared outside of the RMC, to seek amongst others, expert opinions.

The Commission requests comment on 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?

We believe that the same confidentiality terms for RMC members should apply to employees of an RMC member who receive such information. This should follow best practices on confidentiality agreements that protect such information.

RMC members should be allowed to consult with experts within their members firms to allow them to provide meaningful input; an RMC member cannot be expected to be experts about all topics and therefore allowing internal consultation will add values to these discussions in the RMC.

Note that some CCPs allow RMC members to share information on an ad hoc basis. The topics and specific staff should not be narrowly defined as it is difficult to cater for all the types of information and people to be consulted by RMC members.

III. Conclusion

We appreciate the opportunity to provide the foregoing comments on the DCO Governance Proposal. FIA supports the Proposal although some of the rules would benefit for further clarifications and additional requirements. We would also encourage the Commission to engage promptly where the Commission has suggested the potential for future rulemaking.

FIA is looking forward to discussing with the Commission FIA's response as well as other relevant topics relating to DCO governance, especially the DCOs' Self-Regulatory Organization duties.

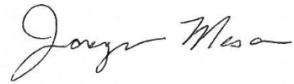
Mr. Christopher Kirkpatrick

October 11, 2022

Page 10

Thank you again for the opportunity to comment. Please contact Jacqueline Mesa, Chief Operating Officer and Senior Vice President of Global Advocacy, at 202-772-3040, if you have any questions about this letter.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Jacqueline Mesa".

Jacqueline Mesa

Chief Operating Officer and Senior Vice President, Global Policy