

September 26, 2023

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st St. N.W.
Washington, DC 20581

**Re: Derivatives Clearing Organizations Recovery and Orderly Wind-down Plans;
Information for Resolution Planning (RIN 3038-AF16)**

Dear Mr. Kirkpatrick:

The International Swaps and Derivatives Association, Inc. (“ISDA”) and the Futures Industry Association (“FIA”) (together, the “Associations”)¹ appreciate the opportunity to submit these comments on the Commodity Futures Trading Commission’s (the “Commission”) notice of proposed rulemaking (the “NPRM”).

We welcome the opportunity to provide our views on the NPRM and are generally very supportive of the proposed rule changes, including the proposed enhancements to the regulatory framework for the recovery and orderly wind-down plans (“OWP”) for systemically important derivatives clearing organizations (“SIDCOs”) and derivatives clearing organizations (“DCOs”) that elect to be subject to the provisions in Subpart C of part 39 of the Commission’s regulations; and the proposal that all DCOs be required to maintain and submit orderly wind-down plans. Central counterparty recovery, wind-down, and resolution planning are critical topics for financial stability. These are ongoing areas of focus for international standards setting bodies² and should continue to be priorities for the Commission.

We believe that the proposed rule is well-balanced, in that the NPRM is prescriptive in the analysis that DCOs have to perform, yet retains flexibility for the outcome of this analysis. For instance, the NPRM does not prescribe what recovery tools a DCO should select.

¹ Descriptions of the Associations are included in the Appendix.

² See for instance the CPMI-IOSCO “Report on current central counterparty practices to address non-default losses” (www.bis.org/cpmi/publ/d217.pdf) or the FSB work on resources in resolution (<https://www.fsb.org/2023/09/financial-resources-and-tools-for-central-counterparty-resolution-consultation-report/>)

General Comments

We welcome that with these proposed rules, the Commission would require DCOs to develop a plan for their recovery (for SIDCOs and Subpart C DCOs) and orderly wind-down (for all DCOs) and provides clear expectations as to what the planning process should encompass. We also welcome that the Commission has considered FSB and CPMI-IOSCO guidance in developing this proposed rule.

Because the Commission requires SIDCOs and Subpart C DCOs to file and maintain plans for recovery and orderly wind-down, we do not believe the additional requirements in this NPRM will be an overly large burden on these DCOs. The DCOs that are required to provide such recovery and wind-down plans form key elements of the U.S. and global clearing infrastructure. The market needs to be able to rely on these financial markets infrastructure to be prepared for all known risks, including non-default losses scenarios.

In the response to the questions posed in the NPRM, we make the following key points:

- DCOs should be subject to requirements limiting their clearing members' exposures towards the DCO, so that stakeholders' potential losses and liquidity shortfalls are transparent, measurable, manageable and controllable.
- Risks in relation to non-default losses (“**NDL**”) stemming from activities controlled by the DCO and exclusively managed by the DCO should not be borne by clearing members.
- Clearing participants (clearing members and their clients, together called “**Participants**”) should be compensated for the use of recovery measures. Participants suffering losses from the use of recovery tools enable the DCO to generate potential future profits. It is fair that these future profits should be shared with these Participants.
- Transparency, governance and communication in the preparation, design and activation of any recovery or orderly wind-down plan are important. DCOs should be required to ensure adequate involvement of clearing Participants in the design phase of the plans. We would encourage the Commission to spell out more explicitly the requirements regarding the ways in which the DCOs will be expected to consult with relevant stakeholders. This could include a role for the Risk Management Committee with regards to these plans.
- We welcome that the NPRM includes requirements for DCOs to thoroughly consider the potential impact, including a cost-benefit analysis, of all measures included in the plan on clearing Participants and other relevant stakeholders.
- We are mindful of the importance of supervisory cooperation, especially in a crisis. Therefore, we believe that domestic and international authorities, including supervisors and

resolution authorities, should cooperate closely both in the rulemaking process and when reviewing recovery plans of DCOs.

- In this context, we welcome that the CFTC has worked with FDIC staff on the proposal, and put forward planned enhancements to reporting requirements by SIDCOs and Subpart C DCOs to reflect additional information that may be required for resolution planning, which we fully support.
- The CFTC should also liaise with the SEC to ensure that CCPs supervised by both do not run into issues driven by contradictory or incompatible regulation.

This response covers the positions of our members on the buy-side and sell-side. The paper does not reflect the views of many CCPs, and many of the CCPs are in disagreement with the views.

* * *

ISDA and FIA appreciate the opportunity to submit these comments on the Commission's Consultation.

If ISDA or FIA can be of any help in this process, we hope that you will not hesitate to contact the undersigned.

Sincerely,



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Appendix 1: Response to the Commission’s questions**Proposed Amendments to § 39.39 - Recovery and Orderly Wind-down for SIDCOs and Subpart C DCOs; Information for Resolution Planning****A. Definitions – § 39.39(a), § 39.2 – pp. 48973-48974**

[The Commission doesn’t explicitly request feedback on the amended definitions]

We support the amended definitions, and welcome the alignment with definitions set out in relevant FSB and CPMI-IOSCO guidance documents, and with recovery rules in the European Union.

B. Recovery Plan and Orderly Wind-down Plan – § 39.39(b)**1. Submission of plans for recovery and orderly wind-down – § 39.39(b)(1) – p. 48975**

Proposed § 39.39(b)(1) would require each SIDCO and Subpart C DCO to maintain and, consistent with § 39.19(c)(4)(xxiv), submit to the Commission, viable plans for recovery and orderly wind-down, and supporting information, due to, in each case, default losses and non-default losses. The Commission requests comment on these proposed revisions.

We welcome these requirements and do not have comments on these proposed revisions.

2. Notice of Initiation of the Recovery Plan and of Pending Orderly Wind-down – § 39.39(b)(2), § 39.13(k)(1), and § 39.19(c)(4)(xxv) – p. 48975

The Commission proposes to move the requirement that recovery plans and wind-down plans “include procedures for informing the Commission, as soon as practicable, when the recovery plan is initiated or wind-down is pending” to § 39.39(b)(2) and to amend the requirement to state explicitly that in addition to having procedures in place for informing the Commission that the recovery plan is initiated or that orderly wind-down is pending, the SIDCO or Subpart C DCO must notify the Commission, as soon as practicable, when the recovery plan is initiated or orderly wind-down is pending.

The Commission proposes to add new § 39.19(c)(4)(xxv) to require that each DCO notify the Commission and clearing members as soon as practicable when the DCO has initiated its recovery plan or orderly wind-down is pending.

The Commission requests comment on these proposed changes.

We support the addition of a new provision requiring each DCO to notify the Commission and clearing members as soon as practicable when the DCO has initiated its recovery plan or orderly wind-down is pending. Given the potential significant impact of recovery or orderly wind-down on clearing members, DCOs should endeavour to inform clearing members as early as possible in such events. We also propose that clearing members are consulted in the design phase of the plans for recovery and orderly wind-down.

We also believe that clients, as far as they are known by the DCO, should be informed by the DCO directly if they are affected by recovery measures.

3. Establishment of Time to File Recovery Plan and Orderly Wind-down Plan – Proposed § 39.39(b)(3) – pp. 48975-48976

The Commission is proposing § 39.39(b)(3) to require a SIDCO to file a recovery plan, and supporting information, within six months of its designation as systemically important by the FSOC. The Commission is also proposing to require that a DCO that elects to be subject to the provisions of Subpart C must file a recovery plan and (to the extent it has not already done so) an orderly wind-down plan, and supporting information for these plans, as part of the DCO's election to be subject to the provisions of Subpart C. The Commission is proposing that such plans be updated thereafter on an annual basis. The Commission requests comment on this aspect of the proposal.

While we believe that six months are enough as it is likely that all DCOs already have a recovery plan as a starting point, we would be supportive of a longer period if this would afford DCOs appropriate time to consult with clearing members.

C. Recovery Plan and Orderly Wind-down Plan: Required Elements – § 39.39(c)

1. Critical Operations and Services, Interconnections and Interdependencies, and Resilient Staffing – § 39.39(c)(1) – pp. 48976-48378

The Commission is proposing to add new § 39.39(c)(1) requiring recovery plans and orderly wind-down plans to identify and describe the SIDCO's and Subpart C DCO's critical operations and services, including internal and external service providers; ancillary services providers; financial and operational interconnections and interdependencies; aggregate cost estimates for the continuation of services; plans for resilient staffing arrangements for continuity of operations into recovery or orderly wind-down; plans to address the risks that the failure of each critical operation and service poses to the DCO, and a description of how such failures would be addressed; and a description of how the SIDCO and Subpart C DCO will ensure that the services continue through recovery and orderly wind-down.

The Commission requests comment on this aspect of the proposal.

We support the proposal, which is in line with global guidance and international best practice. We also assume that most DCOs already do this as part of a prudent risk management framework.

2. Recovery Scenarios and Analysis – § 39.39(c)(2) – p. 48978

The Commission is proposing to add new § 39.39(c)(2) to specify scenarios that must be addressed in the SIDCO's or Subpart C DCO's recovery plan, to the extent, in each case, that such scenario is possible.

The Commission requests comment on this aspect of the proposal.

We agree that the current requirement for a SIDCO or Subpart C DCO to “*identify scenarios that may potentially prevent it from being able to meet its obligations*” is too broad and therefore welcome the proposal to further specify scenarios that must be addressed in SIDCO or Subpart C DCOs' recovery plans.

We agree with the suggested list of scenarios that must be addressed in the recovery plan and with the proposed steps in the analysis that should take place for each scenario considered in the recovery plan.

Scenarios should be focused on events that “*may prevent it from meeting its obligations or providing its critical services as a going concern*” and not be so wide that the scenario, and attached trigger, cover situations that can be managed as business as usual (“BAU”). For instance, one scenario in proposed new § 39.39(c)(2) is “*poor business results*”. Poor business results could be covered by BAU reserves, but might be so severe that the losses deplete available equity so much that the DCO would no longer be compliant with regulations. In this case, recovery would be warranted. We therefore propose that a DCO should be able to restrict each recovery scenario (both the ones in new § 39.39(c)(2) and scenarios identified by the DCO) so they only cover cases where the scenario is so severe that it “*may prevent it from meeting its obligations or providing its critical services as a going concern*”. With this clarification, we also do not believe there will be a possible limitless set of scenarios. For a well-run DCO, an event that “*may prevent it from meeting its obligations or providing its critical services as a going concern*” is not a low threshold, but should be indeed a very unlikely situation. Nevertheless, it is important to plan for such events given their broader potential impact to financial stability.

We do support materiality thresholds, in the sense that events or losses that a DCO can deal with in BAU, using its own resources, should not be required to trigger recovery. We however do not agree to materiality thresholds that require “*significant likelihood*” to be triggered for the DCO to draw up recovery plans for a scenario. If a scenario is not implausible and “*may prevent it from meeting its obligations or providing its critical services as a going concern*”, there should be a recovery plan for this scenario.

We explicitly welcome the addition of a requirement for a DCO to include scenarios involving multiple DCO failure or failure of a globally systemic member bank and thus impacting multiple CCPs at the same time.

We underline the importance of assessing the potential financial and operational impact of the scenario on clearing members, as well as clients.

As with the rest of recovery planning, we believe the scenario analysis should be discussed by the risk management committee.

3. Recovery and Orderly Wind-down triggers – § 39.39(c)(3)(i) – pp. 48978-48979

The Commission is proposing new § 39.39(c)(3)(i) to require that a SIDCO’s or Subpart C DCO’s recovery plan discuss the criteria that may trigger both implementation and consideration of implementation of the recovery plan, and the process that these DCOs have in place for monitoring for events that are likely to trigger the recovery plan.

The Commission is proposing § 39.39(c)(3)(ii) to require the recovery plan and orderly wind-down plan each to include a description of the information-sharing and escalation process within the SIDCO's and Subpart C DCO's senior management and the board of directors.

The Commission requests comment on this aspect of the proposal.

We agree with these proposed requirements, and note that the description of the information-sharing and escalation process should also include a timeline for communication with clearing members, considering at which point the DCO should inform clearing members that a trigger is likely to be hit. CCPs have regular interaction with clearing members and should be able to easily notify clearing members through existing communications channels that the CCP is likely to implement its recovery or wind-down plan without taking resources away from the risk management required to execute such a plan.

We also note that a DCO should be able to define triggers in a way that these recovery scenarios are only triggered if the underlying issue cannot be resolved as part of BAU operations with existing resources of the DCO. (see our proposals to the question above). We also believe that triggers should not be automatic, but that the DCO should be allowed discretion whether an event does actually trigger the recovery plan for a given scenario.

4. Recovery Tools – § 39.39(c)(4) – pp. 48979-48980

The Commission is proposing § 39.39(c)(4) to require a SIDCO or Subpart C DCO to have a recovery plan that includes the following: (i) a description of the tools that the DCO would expect to use in each scenario required by proposed paragraph (b) of this section that comprehensively addresses how the DCO would continue to provide critical operations and services; (ii) the order in which each such tool would be expected to be used; (iii) the time frame within which each such tool would be expected to be used; (iv) a description of the governance and approval processes and arrangements within the DCO for the use of each tool available, including the exercise of any available discretion; (v) the processes to obtain any approvals external to the DCO (including any regulatory approvals) that would be necessary to use each of the tools available, and the steps that might be taken if such approval is not obtained; (vi) the steps necessary to implement each such tool; (vii) a description of the roles and responsibilities of all parties, including non-defaulting clearing members, in the use of each such tool; (viii) whether the tool is mandatory or voluntary; (ix) an assessment of the likelihood that the tools, individually and taken together, would result in recovery; 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 DCO, linked financial market infrastructures, and the financial system more broadly.

The Commission requests comment on this aspect of the proposal. With respect to the types of recovery tools in particular, the Commission welcomes comment whether DCOs use, or would anticipate using, any tools not identified above in order to meet the full scope of financial deficits a DCO in recovery may need to remediate.

We agree that at minimum, the detailed description of considerations should be part of the recovery plan.

We note that the Commission declined to prescribe specific tools that should be considered and included as part of DCOs recovery plans, leaving it at the DCO's discretion. FIA, IIF and ISDA compiled a list of recovery tools as part of the incentive analysis published in 2019.³ We believe that, in general, applicable recovery tools should be determined based on the market and product cleared by the DCOs subject to due consideration for the factors included in §39.39(c)(4), including an assessment of the associated risks from the use of each such tool to non-default clearing members, clients and the broader financial system. For instance, Variation Margin Gains Haircutting (VMGH) is a tool that could be appropriate for futures and options, but will not be suitable for repos or cash securities clearing. Likewise, tools suitable for default losses, like VMGH, are not necessarily suitable for non-default losses.

With regards to the analysis of the effect of any tools identified, we note that this analysis should include the impact of the tools on clearing members and clients and on stakeholders' incentives, including the DCO. Alignment of incentives of stakeholders, including DCOs, clearing members and end-users is critical in facilitating the successful recovery of a DCO. Therefore, an assessment on the impact on incentives should be explicitly included in § 39.39(c)(4).

One tool that is very effective in aligning incentives is appropriately sized tranches of DCO's equity, one before the use of the guarantee fund and another before recovery tools are utilized.

In addition, as part of the assessment of associated risks from the use of recovery tools required in 39.39(c)(4)(x), the DCO should also be required to take into consideration the scenario in which such tool may be used, and the potential procyclical impact of using such tools in a relevant stressed environment.

The requirement "*to assess the associated risks to non-defaulting clearing members and their customers and linked FMIs*" could be read as a requirement to assess risks to retail customers of

³ <https://www.isda.org/2019/03/15/ccp-recovery-and-resolution-incentives-analysis/>

self-clearing banks. We propose to reword this requirement to “*assess the associated risks to non-defaulting clearing members and their **clearing** customers and linked FMIs*”.

Finally, recovery tools and provisions should be designed in a way that allows clearing participants to limit their liability to the DCO and to ensure that the recovery tools can only be used in a limited manner (in time and dollar value) to ensure that the impact of such tools is predictable and reliable during stress, and do not further destabilize the market.

We also believe that clearing participants should be compensated for losses they suffer from the use of recovery tools. Recovery tools are designed to enable the continuation of the DCO as a going concern, which includes the ability of the DCO to generate future profits, which it might not have without clearing participants taking losses from the use of recovery tools. We believe that clearing participants should at minimum receive a share of these future profits of the DCO.

5. Orderly Wind-down Scenarios and Tools – § 39.39(c)(5) – pp. 48980-48981

Proposed § 39.39(c)(5) would require each SIDCO and Subpart C DCO to identify scenarios that may prevent it from meeting its obligations or providing its critical services as a going concern, describe the tools that it would expect to use in an orderly wind-down that comprehensively address how the DCO would continue to provide critical operations and services, describe the order in which each such tool would be expected to be used, establish the time frame within which each such tool would be expected to be used, describe the governance and approval processes and arrangements within the DCO for the use of each of the tools available, including the exercise of any available discretion, describe the processes to obtain any approvals external to the DCO (including any regulatory approvals) that would be necessary to use each of the tools available, and the steps that might be taken if such approval is not obtained, set forth the steps necessary to implement each such tool, describe the roles and responsibilities of all parties, including non-defaulting clearing members, in the use of each such tool, provide an assessment of the likelihood that the tools, individually and taken together, would result in orderly wind-down, and provide an assessment of the associated risks to non-defaulting clearing members and those clearing members’ customers with respect to transactions cleared on the DCO, linked financial market infrastructures, and the financial system more broadly.

The Commission requests comment on this aspect of the proposal. The Commission specifically requests comment on whether the scope of clearing member customers that are focused upon (i.e., “those clearing members’ customers with respect to transactions cleared on the” DCO) is appropriately broad, and appropriately framed.

We agree with the proposal on the identification of scenarios preventing a DCO to meet its obligation, and to identify which tools may be used to achieve an orderly wind-down. We however believe that for SIDCOs, the feasibility of wind-down is questionable, especially if the SIDCO is a dominant CCP and there are little options in the market. Hence, a wind-down plan does not eliminate the need for very robust recovery and resolution planning.

Aa lot of the requirements for recovery and orderly wind-down are similar. Most of our comments we make in relation to recovery are also valid to orderly wind-down.

We very much welcome the proposal to require an assessment of the associated risks to non-defaulting clearing members and those clearing members' customers with respect to transactions cleared on the DCO, linked financial market infrastructures, and the financial system more broadly. To that end, we note that resolution tools should be subject to certain limitations, for example:

- Initial Margin Haircutting should be explicitly ruled out to the extent it would be allowable under CFTC rules in the first place;
- Clearing members and clients should not be subject to unlimited liability;
- The use of tools such as VMGH and Partial Tear Ups should be subject to limitations in time and amount etc.

We observed during the migration of transactions away from an European CDS CCP how challenging such migration could be for market participants, especially if there is a choice of CCPs to migrate to. We note that this migration has happened without the CCP being in distress and with longer timelines. An orderly wind-down might be more challenging if the orderly wind-down is triggered by a CCP failure, including shorter timelines and market stress.

We would suggest introducing a requirement to include a timeline setting out exactly when the DCO would consult clearing members before actioning any of the measures listed in the orderly wind-down plan.

6. Agreements to be Maintained During Recovery and Orderly Wind-down – § 39.39(c)(6) – p.48981

The Commission is proposing § 39.39(c)(6) to provide that a SIDCO or Subpart C DCO must determine which of its contracts, arrangements, agreements, and licenses associated with the provision of its critical operations and services as a DCO are subject to alteration or termination as a result of implementation of the recovery plan or orderly wind-down plan. The recovery plan

and orderly wind-down plan must describe the actions that the DCO has taken to ensure that its critical operations and services will continue during recovery and wind-down despite such alteration or termination.

The Commission requests comments on this aspect of the proposal.

We welcome the requirement and do not have any further comments on this proposal.

7. Governance – § 39.39(c)(7) – p. 48981

The Commission is proposing new § 39.39(c)(7) to require each SIDCO's and Subpart C DCO's recovery plan and orderly wind-down plan to be annually reviewed and formally approved by the board of directors, and to describe an effective governance structure that clearly defines the responsibilities of the board of directors, board members, senior executives, and business units. Each plan must also describe the processes that the DCO will use to guide its discretionary decision-making relevant to each plan, including those processes for identifying and managing the diversity of stakeholder views and any conflict of interest between stakeholders and the DCO. The Commission requests comment on this aspect of the proposal.

We would suggest adding a requirement to consult with the Risk Management Committee of the DCO in the design phase and annual review of the recovery and orderly wind-down plans and that a summary of the recovery plan is made available to members (insofar as such part of the plan impacts them).

We also propose that the Risk Management Committee should review the recovery and orderly wind-down plans after any change to the DCO's legal or organizational structure or business or financial situation which could have a material effect on those plans or otherwise necessitate a change to the plans, review, test and, where necessary, update their recovery plans.

With regards to managing the diversity of stakeholder views, we suggest adding a requirement to document these views within the plans, and setting out how the diverging views have been taking into consideration in the design phase of the plan.

8. Testing – § 39.39(c)(8) – pp. 48982-48983

The Commission is proposing new § 39.39(c)(8) to require that the recovery plan and orderly wind-down plan of each SIDCO and Subpart C DCO include procedures for testing the viability

of the plans, including testing of the DCO's ability to implement the tools that each plan relies upon

The Commission requests comment on this aspect of the proposal. The Commission specifically requests comment as to whether the rule should require that the SIDCO or Subpart C DCO include (rather than simply consider including) external stakeholders that the plan relies upon in the testing. The Commission also specifically requests comment on the proposed requirement that tests be conducted not less than annually: would a different minimum frequency be more appropriate?

We would support a requirement for relevant DCOs to include external stakeholders that the plan relies upon in the testing.

We agree that the plans need to be tested on a regular basis. We would recommend a frequency of twelve months, which would be in line with the requirements to test default procedures. We also suggest the two test requirements to be combined into one test.

The Commission could also consider whether to encourage (or require) multi CCP default fire drills including test of the recovery plans in context of a systemic crisis.

D. Information for Resolution Planning – § 39.39(f) – pp. 48983-48987

We welcome that CFTC has worked with FDIC staff on the proposal and put forward planned enhancements to reporting requirements by SIDCOs and Subpart C DCOs to reflect additional information that may be required for resolution planning. We strongly support adoption of the Commission's proposal on this issue.

E. Renaming Regulation 39.39 – p.48987

We do not have any comments on this aspect of the proposal.

Orderly Wind-down Plan for DCOs That Are Not SIDCOs or Subpart C DCOs

A. Requirement to Maintain and Submit an Orderly Wind-down Plan – § 39.13(k)(1)(a) – p. 48987

The Commission is proposing to require that a DCO that is neither a SIDCO nor a Subpart C DCO must nevertheless maintain and submit to the Commission viable plans for orderly wind-down necessitated by default losses and non-default losses.

The Commission requests comment on the proposed changes. In particular, the Commission requests comment on the extent to which the proposed requirements concerning orderly wind-down plans for DCOs that are neither SIDCOs nor Subpart C DCOs appropriately balance seeking to ensure that such DCOs are prepared to wind-down in an orderly manner and mitigating the costs of preparing plans for such a wind-down. To the extent a better balance can be achieved, please discuss both the requirements that should be deleted or modified and the basis for the conclusion that the regulatory goal of orderly wind-down would reliably be achieved in light of such changes.

We support the introduction of a requirement for all DCOs to develop viable plans for orderly wind-down, even if these DCOs might not be systemically important. All DCOs have clearing members and customers which rely on an orderly wind-down. Solely relying on bankruptcy and a full-tear-up of the DCO could be too disruptive.

We believe that non-SIDCO DCOs should become subject to a SIDCO-light version of recovery planning requirements. They should be required to discuss recovery plan development with stakeholders, including the risk committee, to perform limited scenario planning and analysis, to identify available tools and order of usage, and to provide clarity on financial resources and right sizing of resources for NDLs. The major difference should be in the depth of analysis to be performed by the non-SIDCO DCO when developing its recovery plan.

Having a credible recovery plan should be standard business practice for every DCO, not only SIDCOs or Subpart C DCOs. Should a DCO not have a recovery plan, it should be very clear in the DCO's rules that the DCO cannot utilize any resources from clearing participants (clearing members or their clients) should it get into a situation that *"may prevent it from meeting its obligations or providing its critical services as a going concern"*.

B. Notice of the Initiation of Pending Wind-down – § 39.13(k)(1)(ii) – p.48987

The Commission proposes to add new § 39.13(k)(1)(ii) to require that each DCO shall have procedures for informing the Commission and clearing members, as soon as practicable, when orderly wind-down is pending, and shall notify the Commission and clearing members consistent with proposed § 39.19(c)(4)(xxv). The Commission requests comment on these proposed changes.

We welcome the introduction of a requirement to inform clearing members as soon as practicable when orderly wind-down is pending. Measures taken in an orderly wind-down scenarios are bound to have a direct impact on clearing members and their clients, underlining the importance for DCOs to inform clearing members ahead of time, and to consult with clearing members during the design phase of the plan.

C. Orderly Wind-down Plan: Required Elements – §§ 39.13(k)(2)–(6) – pp.48988-48992

The Commission is proposing new § 39.13(k)(2) to require a DCO to include in its orderly wind-down plans a summary providing an overview of the plan followed by a detailed description of how the DCO will implement the plan. The Commission requests comment on this aspect of the proposal.

We support the proposed required elements to be included in an orderly wind-down plan. We would suggest to further specifying how DCOs will consult with clearing members in the design phase of the plan, and at which point in time they will engage with clearing members in the event of an activation of the plan.

D. Conforming Changes to Bankruptcy Provisions – Part 190 – p. 48992

The Commission is proposing several conforming changes to Part 190's bankruptcy provisions that follow from the proposed requirement that all DCOs maintain viable plans for orderly wind-down.

The Commission requests comment on this aspect of the proposal.

We do not have any comments on this aspect of the proposal.

Appendix 2: Overview of the Associations

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 79 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on Twitter, LinkedIn, Facebook and YouTube.

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About FIA

FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. Our membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers. Our mission: To support open, transparent and competitive markets, protect and enhance the integrity of the financial system, and promote high standards of professional conduct. Information about FIA and its activities is available on the Association's website: www.fia.org.

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