



October 11, 2022

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

Submitted via electronic filing: <https://comments.cftc.gov>

Re: Governance Requirements for Derivatives Clearing Organizations, RIN 3038-AF15

I. Introduction

BlackRock, Inc. (together with its affiliates, “**BlackRock**”)¹ respectfully submits its comments to the Commodity Futures Trading Commission (the “**CFTC**” or “**Commission**”) in response to the CFTC’s request for comment on proposed governance requirements for derivatives clearing organizations (the “**Proposal**”).² We commend the CFTC for advancing the work undertaken by the CCP Risk & Governance Subcommittee (the “**Subcommittee**”) of the Market Risk Advisory Committee (“**MRAC**”) and moving to adopt many of the Subcommittee’s recommendations on DCO governance through this Proposal.

BlackRock has long advocated for reforms to improve the resiliency of derivatives clearing organizations (“**DCOs**”) and central counterparties (“**CCPs**”), including reforms to initial margin calculations, default fund sizing, CCP capital contributions to the default waterfall, disclosures, stress testing, non-default losses, and governance practices. We believe that CCP governance structures should provide market participants a forum to communicate their risk perspectives and for those perspectives to be considered by the CCPs’ governing bodies and, where relevant, their supervisory authorities. Indeed, we agree with Chair Behnam that “DCOs with governance structures that embrace the diverse risk-based views of clearing members and their clearing members’ customers will be better situated to refine their risk management frameworks to withstand extreme but plausible market conditions while promoting financial stability.”³

¹ BlackRock is one of the world’s leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed-income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers, and other financial institutions, as well as individuals around the world.

² See Governance Requirements for Derivatives Clearing Organizations, 87 Fed. Reg. 49,559 (Aug. 11, 2022).

³ See [Opening Statement](#) of Chairman Rostin Behnam for Jul. 27, 2022 Open Meeting.

BlackRock's views on CCP governance structures are consistent with the objectives of the DCO Core Principles ("Principles").⁴ Specifically, Principles O and Q provide the following requirements:

DCO Core Principle O 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.

DCO Core Principle Q requires a DCO to ensure that the composition of its governing board or committee includes market participants.

We are pleased to see that the Proposal achieves the goals in Principle Q, and while the Proposal is a meaningful step towards achieving the goals in Principle O, there are additional elements which we believe should be included to truly achieve alignment with the core principle. Many of these recommendations were presented by the Subcommittee but were not agreed upon by all of the DCOs. We are encouraged that the Commission is requesting comment on some of these issues, and BlackRock appreciates the opportunity to comment on the Proposal.

II. Proposed Amendments to § 39.24(b)

A. Establishment and Consultation of Risk Management Committees—§39.24(b)(11)

We are supportive of the CFTC's proposal to require DCOs to establish risk committees that "appropriately reflect the legitimate interest of clearing members, customers of clearing members, and other relevant stakeholders." While many DCOs do indeed have some form of risk committee in place, the requirement to include end-user representation is an important addition as not all DCOs formally include end-users at these fora. Additionally, specifying that the DCO's board "should respond to the substance of the input it receives rather than merely acknowledging the input was received"⁵ will bolster the effectiveness of risk management committees ("**RMCs**") and the board and will ultimately enhance market resiliency.

However, we believe the Proposal overly emphasizes the board of directors' responsibility to consult with RMCs rather than requiring the management teams, who are developing, introducing, and managing new risks to solicit and deliver relevant information to the RMCs. In the absence of requiring the DCO to solicit feedback from the RMC, there is a risk that input is only received from those entities that have a seat on the RMC. As discussed in further detail below, we suggest the DCOs leverage the market participant risk advisory working groups ("**RWGs**") as a forum to solicit feedback and that the CFTC require the RWGs to share relevant information with the RMC.

⁴ As stated in the Proposal, Section 5b(c)(2) of the Commodity Exchange Act (CEA) sets forth core principles with which a DCO must comply in order to be registered and to maintain registration as a DCO (DCO Core Principles) (codified in 7 U.S.C. 7a-1). Part 39 of the Commission's regulations implement the DCO Core Principles.

⁵ See 87 Fed. Reg at 49,560.

With respect to the Commission’s request for comment on § 39.24(b)(11) regarding the introduction of new products, we do not believe that a “new product should be categorically treated as a matter that could materially affect the DCO’s risk profile...” We recognize the need for speed and innovation in derivatives markets and respect a principles-based regulatory framework. Nevertheless, we recommend the Commission consider guidelines that would force a new product to undergo additional scrutiny where appropriate. Aspects such as new and/or limited pricing sources, the addition of a new asset class, or the introduction of exceedingly long tenors are appropriate elements to include in guidelines. Consideration should be given to a model where a DCO could itself underwrite new product introductions as the current model allows the DCO to introduce new revenue streams to its shareholders while ultimately externalizing potential losses to its members, and in extreme cases, its members’ clients.

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

We agree with the proposed rule provision to require DCOs to maintain policies and procedures governing DCO consultation with its RMCs, and to document the activities of its RMCs. Additionally, we believe the Commission should require DCOs to maintain minutes of RMC meetings. We believe this is an important element to “promote transparency, accountability, and predictability, and facilitate effective oversight by the Commission in this area.”⁶

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

We strongly support the proposed provision to adopt the MRAC Subcommittee’s recommendation that an RMC include representatives from both clearing members and customers of clearing members and believe it closes a gap that had existed in Core Principle Q as discussed above. In order to ensure RMCs have a well-balanced membership representing perspectives from different business types and models, as well as a variety of large and small companies, we recommend further specifics regarding composition of RMCs. For example, for end-user members, DCOs could require that a minimum of X% initial margin is represented across a minimum of Z participants, setting such parameters to ensure that a meaningful level of risk is represented while preventing dominance by a handful of firms. Balancing perspectives is an important element to a successful RMC.

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

An optimal governance structure should include a requirement to regularly rotate those who govern, while balancing the expertise and value that is gained through experience. We believe the Commission should take a principles-based approach by requiring DCOs to regularly rotate and stagger its RMC membership to ensure that the RMC provides the DCO with fresh perspectives, while allowing the specific timelines to be determined by the DCO.

⁶ See 87 Fed. Reg. at 49561.

E. Establishment of Risk Working Groups to Obtain Input –§39.24(b)(12)

We appreciate the proposed establishment of Risk Working Groups to “further expand and diversify the information available to a DCO while making material risk decisions and to expand opportunities for those with a stake in DCO risk management to provide input.” As discussed above, we see an important role for RWGs in the solicitation of member and end-user perspectives. However, there is no proposed connection between the RWGs and the DCO’s key oversight bodies, the RMC, and the board. For the RWG to be effective at soliciting market feedback, we recommend that the RMC be required to consider the feedback obtained at these RWGs.

With respect to the suggested cadence for the RWG meetings, we believe that requiring that the RWGs convene at least quarterly is overly prescriptive. Instead, we believe a bi-annual cadence with a requirement to convene more frequently when warranted is a more reasonable expectation.

III. Proposed Amendments to –§39.24(c)

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

We agree with the Commission’s position and proposed rule to require DCOs to establish fitness standards for its RMC members. The material in front of RMC members will be fairly specialized and will require a certain level of experience and skills.

B. Role of RMC Members as Independent Experts –§39.24(c)(3)

We agree with the Commission’s discussion in the Proposal to enable RMC members to serve as independent risk experts, rather than “be beholden to their employers’ particular interests nor acting as fiduciaries for the DCO.” The Commission proposes to “require a DCO to maintain policies designed to enable its RMC members to provide independent, expert opinions in the form of risk-based input on all matters presented to the RMC for consideration, and perform their duties in a manner that supports the safety and efficiency of the DCO and the stability of the broader financial system.” In order to avoid any potential lack of clarity, we recommend the Commission require DCOs to specify in these policies that RMC members would not be serving as fiduciaries to the DCO, particularly when acting as a fiduciary to the DCO may conflict with the RMC’s objective of supporting the stability of the broader financial system.

IV. Request for Comment

A. Market Participant Consultation Prior to Rule Change

The Commission has requested 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 the DCOs should engage participants. Additionally, the Commission requests comment on whether DCOs should be required to provide the Commission with a report of all opposing views.

Which rule changes?

We think it would be impractical to require all rule changes to be subject to a consultation requirement as many rule changes are not likely to affect the DCO's risk profile. Instead, we recommend the Commission apply risk-based guidelines to determine which rule changes should be socialized with market participants. Such guidelines could include changes to default fund requirements, loss allocation procedures, settlement procedures, governance and cash investment policies, among many other relevant risk related matters.

Furthermore, we believe that properly constituted RWGs and RMCs should represent a broad spectrum of market participants and as such, consultations with these groups satisfies the definition of a broad spectrum of market participants. Provided that the RWGs and RMCs are so structured, we do not believe there is a need for a DCO to seek additional market input.

How should opposing views be handled?

We believe there should be a requirement for the DCO to report opposing views to the Commission, though we recognize the need to filter out insubstantial or spurious comments. We think it is reasonable to require such opposing views to be those that are submitted in written form, as this removes the burden of interpretation from the DCOs. Assuming the RMCs and RWGs are the venues where a DCO consults a broad spectrum of market participants, it should not be a burden for the DCO to respond back to these bodies with the actions taken.

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

We are supportive of allowing RMC members to obtain feedback from experts within their member firms, subject to relevant guardrails. While we are sympathetic to the concerns regarding confidentiality of the information and the risk inherent in its potential misuse, we believe there are mechanisms that can be employed to mitigate this risk. For example, the individuals who are provided this information should be subject to non-disclosure agreements and could perhaps be required to refrain from market activities for a set amount of time. For less market-sensitive issues, the DCO could require market participants to disclose the individuals with whom the information is shared.

Ultimately, the risk disciplines that are under a DCO board remit are numerous and many are best advised by a variety of experienced professionals with unique skill sets. The DCO will benefit from allowing its RMC members to consult with their own internal experts on issues such as market risk, counterparty risk, operational risk, model risk and liquidity risk, among others.

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We appreciate the Commission's advancing the MRAC Subcommittee recommendations on DCO governance and look forward to continued progress toward enhancing CCP resilience.

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