

MEMO# 34241

August 4, 2022

CFTC Proposes Governance Standards for DCOs

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TO: Derivatives Markets Advisory Committee RE: CFTC Proposes Governance Standards for DCOs

On July 27, the Commodity Futures Trading Commission (CFTC) issued a rule proposal to amend derivatives clearing organizations (DCO) governance standards.[\[1\]](#) The proposed amendments track certain recommendations issued in February 2021 by the Central Counterparty Risk and Governance Subcommittee of the CFTC's Market Risk Advisory Committee.[\[2\]](#) The CFTC also requests comment on other potential enhancements to those standards, which it may address in a future rulemaking.

Comments are due 60 days after publication in the Federal Register. ICI will host a member call via Zoom to discuss the proposal on Monday, August 15 at 3:00 p.m. (ET).

Risk Management Committee

The proposal would enhance existing CFTC governance requirements for DCOs by requiring a DCO to establish one or more risk management committees (RMCs) and require the DCO's board to consult with, consider, and respond to input from those committees on all matters that could materially affect the DCO's risk profile.[\[3\]](#) The DCO would be required to maintain related written policies and procedures. While the CFTC does not prescribe how a DCO's board must respond to an RMC's input, it believes that this requirement would create a consistent and formalized process to address input from clearing members and their customers, i.e., end-users, who the DCO must include as members of the RMC. In addition to establishing fitness standards, a DCO must ensure that RMC members are able to provide "independent, expert opinions" on all matters presented to the committee and perform their duties in a way that supports safety and efficiency of the DCO, and stability of the broader financial system. Further, a DCO must ensure that the RMC's membership is rotated on a regular basis.

Risk Working Group

The proposal also would require a DCO to establish one or more risk advisory working groups (RWGs). The CFTC acknowledges that there are likely practical constraints on the size of an RMC relative to the number of clearing members and customers and that RMC

participation is a significant time commitment, both considerations of which may limit the number of RMC members at a given time. Therefore, the CFTC believes that RWGs would expand the opportunities for interested participants to provide risk-based input to the DCO, among other benefits.

Additional Requests for Comment

In addition to requesting comment on the proposed requirements, the CFTC also requests comment on a number of other aspects. These aspects include:

- Whether a DCO should be required to consult with a "broad spectrum" of market participants prior to submitting a rule change, and whether a DCO should be required to inform market participants when it does not incorporate risk-based feedback;
- Whether there should be additional specificity as to what constitutes a "substantive" opposing view to a proposed DCO rule change, which a DCO is currently required to incorporate in its rule filings to the CFTC;
- Whether a DCO should be required to enable an RMC member to share certain types of information that it learns in its role on the RMC with fellow employees to obtain additional expert opinion, and how such information could be appropriately protected; and;
- Whether the CFTC should further specify what constitutes a "new product" for a DCO and whether any filing for such a product should be automatically subject to RMC consultation.

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endnotes

[1] Governance Requirements for Derivatives Clearing Organizations (July 29, 2022), available at <https://www.cftc.gov/media/7511/FederalRegister072722/download>.

[2] CCP Risk and Governance Subcommittee, CFTC Market Risk Advisory Committee, Recommendations on CCP Governance and Summary of Subcommittee Constituent Perspectives (Feb. 12, 2021), available at https://www.cftc.gov/media/5691/MRAC_MarketStructureSubcommitteeRecommendationsRegardingtheMATProcess022321/download. For a summary of the recommendations, see ICI Memo No. 33140 (Mar. 1, 2021), <https://www.ici.org/memo33140>.

[3] The proposal provides a non-exhaustive list of matters, including a material change to the DCO's margin model, default procedures, participation requirements, and risk monitoring practices, as well as clearing of new products. See Proposed CFTC Rule 39.24(b)(11).

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