

MEMO# 35364

June 30, 2023

CFTC Adopts Final Rule on DCO Governance

[35364]

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TO: Derivatives Markets Advisory Committee RE: CFTC Adopts Final Rule on DCO Governance

On June 7, the Commodity Futures Trading Commission (CFTC) adopted a final rule to require derivatives clearing organizations (DCOs) to establish risk management committee (RMC) and risk working groups (RWGs) that would consult on matters that could materially affect the DCO's risk profile. ICI previously submitted a comment letter expressing support for the CFTC's proposal and recommended, among other things, that RMCs and RWGs be required to include a meaningful proportion of customers.[\[1\]](#)

As adopted, DCOs must establish an RMC and require the DCO's board to consult, consider, and respond to input from the RMC on matters that would materially affect the DCO's risk profile, including DCO's margin model, default procedures, participation requirements, risk monitoring practices, and clearing of new products.[\[2\]](#) The CFTC confirmed that the DCO may structure its RMC as either an advisory committee or as a board-level committee, and may also delegate risk management responsibilities across multiple committees, rather than through a single RMC.

Further, as proposed, DCOs must maintain written policies and procedures to ensure that the DCO documents what that consultation process is and how it considered and responded to input. The CFTC confirmed that a DCO cannot simply acknowledge receipt of input, and further revised the rule to require that RMC meeting minutes must be documented.[\[3\]](#)

In response to recommendations for specific composition requirements for RMCs, the CFTC's final rule requires a DCO to make certain that its RMC includes at least two clearing members and, if applicable, at least two representatives of clearing member customers. While the CFTC's final rule, as proposed, requires the RMC to have a regularly rotating membership, it does not prescribe any specific member rotation requirements. Further, RMC members must be "informed," i.e., have pre-existing risk management knowledge.[\[4\]](#) The CFTC also eliminated the requirement that RMC members be "independent," which referred to the ability of an RMC member to provide risk-based input and not input motivated by member's employer's commercial interests. The CFTC explained that notwithstanding the elimination of this term, an RMC member is still required to provide

risk-based input directed to the safety of the DCO and is subject to existing DCO conflict of interest obligations.

With respect to RWGs, the CFTC's final rule specifies that an RWG must convene at least twice a year. Further, a DCO must document and provide to the RMC, at a minimum, a summary of the topics discussed, and the main points raised during each RWG meeting.

While the CFTC solicited comment on whether a DCO should be required to (1) consult with a broad spectrum of market participants prior to submitting any rule change; and (2) whether an RMC member should be able to share certain types of information learned through the committee with fellow employees for additional expert opinion, it did not adopt any final rule and stated that it may address them in the future.

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Nnotes

[1] ICI Memorandum No. 34306 (Oct. 10, 2022), available at <https://www.ici.org/memo34306>. ICI also provided similar comments to the SEC's proposal on registered clearing agency governance and conflicts of interest, which the SEC has not yet finalized. Clearing Agency Governance and Conflicts of Interest, Exchange Act Release No. 34-85431 (Aug. 8, 2022), 97 Fed. Reg. 51812 (Aug. 23, 2022).

[2] The CFTC's final rule, however, specifies that DCOs that have rules that permit it to clear only fully collateralized positions would not be required to maintain an RMC or an RWG.

[3] The CFTC, however, declined to adopt a requirement that requires a DCO to share its response to RMC input with all market participants, or provide a public summary of RMC meetings. given the sensitivity of some risk-related discussions, among other reasons.

[4] The CFTC eliminated the use of the term "expert" from the proposal to avoid potential misinterpretation about mandatory credentials to qualify as an "expert."