

MEMO# 35433

September 13, 2023

Draft ICI Comment Letter on SEC and CFTC Propose Rules for Clearinghouse Resiliency and Recovery and Wind-Down Plans: Your Comments Requested by Wednesday, September 20

[35433]

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TO: Derivatives Markets Advisory Committee
Equity Markets Advisory Committee
Fixed-Income Advisory Committee RE: Draft ICI Comment Letter on SEC and CFTC Propose Rules for Clearinghouse Resiliency and Recovery and Wind-Down Plans: Your Comments Requested by Wednesday, September 20

As previously reported, the SEC and the CFTC recently proposed amendments to the rules for covered clearing agencies (CCAs) and derivatives clearing organization (DCOs),^[1] respectively, related to resiliency, and recovery and wind-down plans (RWPs).^[2]

ICI has prepared the attached draft comment letter, summarized below, for your review and feedback. Comments are due to the CFTC by September 26 and, as we noted before, we plan to submit one comment letter to both the CFTC and the SEC, given the nature of the proposals.^[3] Accordingly, please provide your written comments to Nhan Nguyen at nhan.nguyen@ici.org and Nico Valderrama at nvalderrama@ici.org no later than Thursday, September 21.

ICI's draft supports the agencies' proposals to prescribe the content of clearing entities' RWPs and particularly supports requiring clearing entities to account for the interests of clearing members and their customers. We outline, however, certain recommendations to provide greater certainty to market participants, improve market confidence, and ensure that clearing members and their customers will receive fair treatment during a clearing entity's recovery and/or wind-down proceedings. Specifically, we strongly recommend that the agencies:

- Harmonize their proposed amendments for clearing entities' RWPs, given that several key clearing entities are registered with both the CFTC and SEC;

- Prescribe the tools a clearing entity must use during a recovery or wind-down;
- Ensure that RWPs distinguish between the clearing entity's approaches to default and non-default loss scenarios; and
- Enhance transparency of RWPs and require clearing entities to consider the input from their risk management committees (RMCs) and risk advisory working groups (RWGs).

Moreover, while we support the SEC's proposed amendments regarding intraday margin, we recommend enhancing the intraday margin collection process by, among other things, limiting CCAs' use of unscheduled intraday margin calls and requiring CCAs to clearly communicate to market participants the thresholds that would trigger an intraday margin call. Finally, we highlight other important areas in which the agencies should take further action to increase the transparency and resilience of DCOs and CCAs.

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Notes

[1] This memorandum refers to CCAs and DCOs collectively as "clearing entities."

[2] Derivatives Clearing Organization: Recovery and Orderly Wind-Down Plans; Information for Resolution Planning, 88 Fed. Reg. 48969 (July 28, 2023) ("CFTC Proposal"), available at <https://www.govinfo.gov/content/pkg/FR-2023-07-28/pdf/2023-14457.pdf>; Covered Clearing Agency Resilience and Recovery and Wind-Down Plans, Exchange Act Release No. 34-97516 (May 17, 2023), 88 Fed. Reg. 34708 (May 30, 2023) ("SEC Proposal"), available at <https://www.govinfo.gov/content/pkg/FR-2023-05-30/pdf/2023-10889.pdf>. For a summary of the proposals, please see ICI Memorandum No. 35342 (June 12, 2023), available at <https://www.ici.org/memo35342>.

[3] ICI, along with several other trade associations, submitted a letter to the SEC in June requesting an extension of the SEC's comment period to align with the CFTC's comment period. For a summary of the comment letter, please see ICI Memorandum No. 35362 (June 28, 2023), available at <https://www.ici.org/memo35362>.