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RE: File Number: S7-10-23; "Covered Clearing Agency Resilience and Recovery and Wind-Down Plans"

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

To Whom It May Concern:

Thank you for the opportunity to comment on the 'Proposed Rule' by the Securities and Exchange Commission ("SEC" or "Commission"), Release No. 34-97516; File No. S7-10-23 concerning "Covered Clearing Agency Resilience and Recovery and Wind-Down Plans." The author of these comments has spent 43 years working in the financial services industry, a large majority of those spent employed as a manager of central counterparties ("CCPs"), employed by participants of the subject 'covered clearing agencies ("CCAs")', serving on the participant risk and operations committees of subject CCAs as well as on the Board of a non-CCA systemically important financial market utility ("SIFMU"). The author has not consulted with nor reviewed these comments with any other parties. Opinions expressed and positions taken are those of the author alone and do not necessarily reflect those of any other person or entity. To the extent that the author may have had, as part of his past employment responsibilities, access to confidential information that could have utility in supporting certain assertions made in this letter, no such information remains in his possession and no such references are included herein.

Executive Summary:

As further detailed in the argumentation that follows, please consider:

1. Sound public policy, if not the specifics of the Administrative Procedure Act (5 US Code section 556), maintain that 'the proponent of a rule or order has the burden of proof.' Put simply, the Commission has failed to meet that burden in the documentation supporting these proposed rules.
2. The proposed 'enhancements' to existing CCA Recovery and Wind-Down Plans ("RWPs") ignore a fundamental characteristic of the current post-trade capital market structure in the United States: It is simply not possible, as a practical matter, to 'resolve' a systemically important financial market utility. They must be 'recovered.' This conclusion is fully supported by the Commission's text: there are no alternative providers for the clearing, custody and settlement services provided by several of the relevant

CCAs; the barriers to entry are enormous; the resolution authority has neither the experience, personnel, expertise nor financial resources to operate a SIFMU in resolution and the damage to the relevant capital markets and indeed the global economy in the time it would take to find, create or enable a 'bridge' entity or an alternative provider given the current volume and velocity of transactions would be material and very likely permanent.

3. While certain enhancements to the rules related to RWPs may appear reasonable, they place the covered CCAs in a very challenging negotiating position vis-à-vis certain critical vendors. From a public policy perspective, a superior alternative, although likely requiring legislation rather than SEC rulemaking, would be to designate certain types of vendors, particularly in the area of technology, as 'systemically important' and directly subject to regulatory oversight. More likely eligible for SEC rulemaking in one form or the other would be the acknowledgement that secondary quotation and market information vendors (sometimes termed "financial data service providers") are a critical part of the 'national market system' and subject to regulatory oversight. At a minimum, such secondary quotation vendors should be prohibited from enforcing certain contractual terms when providing services required by CCAs to perform their existing and proposed regulatorily mandated responsibilities.
4. Intraday financial flows are an important risk management tool for CCAs, however the enhancements suggested in the current proposed rule are not sufficient to address the current shortfalls in their ideal implementation. Rather, two enhancements are needed. First, without giving up the ability to perform on an 'as needed' basis, intraday financial flows among CCPs and their participants, including both 'mark-to-market' and 'original margin' flows, should be mandatory at a fixed scheduled time each trading day, and coordinated so as to occur at the same time across all linked CCPs (e.g. OCC, NSCC and CME Clearing). Second, any intraday financial flows (i.e. scheduled and 'as needed') must be bidirectional; calling for aggregate mark-to-market losses, premium pass through and original margin payments but also paying out aggregate mark-to-market gains and releasing excess original margin cash or collateral.

These four points are further developed below along with responses to certain of the specific questions the Commission has put forth in its rule proposal document.

Burden of Proof:

In proposing these extensive enhancements to rules that already more than adequately cover the areas in question the Commission ought to demonstrate that they are necessary and thus in the public interest. This they have failed to do. In the United States to date there have been no failures of CCAs, no need for the implementation of 'recovery' actions nor the execution of all or parts of recovery plans. Furthermore, there have been no failures of CCA participants where it can be shown that a more robust set of intraday margin policies and procedures would have mitigated or prevented the outcome. Thus, there is no compelling reason for the proposed changes.

Throughout the rule proposal document the Commission puts forth arguments for 'benefits' that are purely hypothetical, and in the case of the modifications to the RWP rules, would only accrue in the highly unlikely event of the implementation of a particular CCAs recovery plan. Set against this is the fact that all of the existing CCA rules, policies and procedures that implement

the necessary conforming actions in response to the existing rules have been reviewed, approved or subject to 'no objection' by staff of the Commission's Division of Trading and Markets ("T&M") and as and where required, by the Commission itself. Furthermore, each relevant CCA has been subject to examination in these subject matter areas by staff of the Division of Examinations. Where deficiencies have been found 'findings' have been issued, reviewed by the Boards of the relevant CCA, and remediation actions taken or at worst in progress—some number of which also require rule submission. Regardless of frequency, both RWP plans and margin rules, policies and procedures are periodically reviewed by each of these institutions. To the extent changes are required these must be submitted for Commission staff review prior to implementation. The informal as well as the formal process utilized in these rule submissions provides more than adequate time for the Commission and its staff to recommend enhancements to drafts including coverage of areas not initially considered by the relevant CCA.

Finally, by determining to implement such changes in the form of Commission initiated rule changes there is a significant and costly 'crowding out' effect in the regulatory process. Although not visible in the current rule proposal, the final rule, if and when adopted, will have an implementation date on or before which all covered CCAs will have to have become compliant. Those implementation steps cannot be undertaken until after each CCA has analyzed its current rules, policies and procedures in each of the several enumerated areas, made a determination as to the most effective and efficient modifications necessary to demonstrate conformance with the new requirements, had those changes reviewed by senior management and their Boards, submitted in draft form to the Division of Trading and Markets and, usually after the elapse of several months (with potentially several suggested modifications along the way), approved by T&M staff for formal submission. All of which, instead of a gradual process over time as each CCA completes its established review cadence, will occur in a compressed period of time. T&M staff are highly competent dedicated public servants, thoroughly experienced and knowledgeable about the operation of CCAs as well as with the various relevant connected elements of the US capital markets. There simply are not enough of them to timely process the current raft of submissions made in the ordinary course as well as the highly ambitious agenda of the current Commissioners. Congress should earmark specific incremental funds to support additional staffing in this division as part of the fiscal 2024 budget process. Adding to that existing burden by requiring the entire industry to submit such a significant number of even largely administrative rule changes all at once will only delay the implementation of other changes that the registrants in their own knowledge of their business requirements may deem of higher priority.

Burdens of proof are not merely a philosopher's sleight of hand ("*onus probandi*") or a legalistic 'form over substance' ploy. They derive from the well-founded, particularly with respect to the operation of America's capital markets, the most deep, liquid and efficient in the world, if classically conservative assumption that the status quo is operating effectively. To effectuate change both the cost and uncertainty of outcome must be incurred. Thus, sound public policy demands that the arguments in favor of such change be both clear and compelling. For at least the reasons articulated above, the Commission has not met that burden in these instances.

2. Recovery vs. Wind-Down:

The notion that clearing agencies in general, and central counterparties in particular, need to be subject to resolution plans derives from the experience during, and the regulatory changes subsequent to the global financial crisis of the first decade of the twenty-first century. It became immediately obvious that with respect to the globally systemically important banks, neither the institutions themselves nor the supervisory authorities in any of the major jurisdictions had any clue as to how to 'wind down' such institutions without causing massive economic disruption. Prudence required the internal development, at great organizational, technological and legal effort and expense of comprehensive plans and changes to internal structures as well as external dependencies to facilitate such wind-downs in the event they became necessary. As post-crisis regulatory changes mandated the utilization of CCPs for a much greater range of financial products, concern arose about the concentration risk associated with such entities. Thus, regulatory and supervisory authorities determined to impose recovery and resolution plans on CCPs, and 'resolution authorities' for CCPs were designated in various jurisdictions.

Very fundamentally, however, CCPs are not banks. Except in the very limited duration between the periodic financial flows among CCPs and their participants, central counterparties do not intentionally extend uncollateralized credit. They certainly do not accept deposits. Indeed, the cash and securities that make up the margin collateral that is far and away the largest source of protection for the CCP's guarantee function are not held on the CCP's balance sheet but instead are the subject of ironclad liens against assets held by participants. In the US CCPs have limited access to accounts at the Federal Reserve and notwithstanding significant amounts of eligible collateral held as parts of their 'clearing funds' have not been granted access to the "Discount Window" (borrowings from which are fully secured). US CCPs utilize commercial bank money rather than central bank money in their financial flows. They cannot draw on either the Federal Deposit Insurance Corporation's nor the Securities Investor Protection Corporation's deposit or account insurance funds. They do not engage in 'maturity transformation' nor are their activities additive to the money supply. Their revenue comes very predominantly from transaction fees rather than net interest income. Perhaps most importantly, as a result of the 1975 amendments to the Exchange Act, as the Commission itself notes in footnote 158 on page 114, the dominant market segments for the US capital markets only have a single central counterparty each. This is true of exchange traded options on securities, government securities, mortgage-backed securities as well as equity, corporate and municipal securities. In contrast, there are thousands of banks in the US and certainly more than several that are large and diverse enough to be considered systemically important. The concept that 'resolution,' which has operated effectively, if happily not yet on a systemically important scale, for banking institutions and their holding companies will also operate for CCPs in unproven in both theory and practice.

As soon as Congress added section 17A to the Exchange Act in 1975 mandating the establishment of a linked and coordinated national system for the prompt and accurate clearance and settlement of securities transactions the current monolithic structure of the post-trade capital markets in the US became inevitable. The Commission makes the reasons for this clear at several points in its document: the economies of scale and skill are gigantic and thus dominant. Furthermore, the existing SIFMU CCPs in both the securities and futures industries are highly interconnected. Both directly through 'cross-margin' agreements and indirectly through a

common collective of systemically important clearing members. It is inconceivable that a multiple clearing member failure of the scope sufficient to push a CCP into resolution would not have a similarly adverse impact on all of the US, and very possibly many of the globally systemically significant CCPs as well. Even ignoring associated time and expense, there is no practical way to move the functionality of one CCP into one of the others as they are all highly likely to 'be in the same boat.'

The secondary capital markets in the US are currently operating at historic volume levels, frequently with unprecedented bursts of volatility. In the equity and equity derivatives markets, while generally dominated by the securities of 100 or so companies there are frequent shifts in the markets' attention to particular securities not necessarily in that group. Simultaneously, corporate actions have become quite complex, the instruments or types of indices underlying exchange traded funds are much broader than in the past and geopolitical issues such as sanctions impact the ability of certain securities to continue to trade on US markets. Add to the mix the ever-present danger of cyber criminals and the potential for cyber attacks by state actors plus the technological challenges of running these single central counterparty organizations. Likewise, the required skills, the demands on retention, and the time to identify, attract and train new staff to the necessary level of expertise in virtually all the relevant departments is very substantial. This means that in particular the time, but also the resources required to theoretically 'wind-down' one of these single central counterparty clearing agencies is considerably shorter and smaller than the time and resources required to identify, equip and put in place a substitute provider, or build a new one from scratch. The US capital markets cannot operate without such critical post-trade entities. This supports the original premise: SIFMU clearing agencies cannot be 'resolved,' they must be 'recovered.'

Happily, oversight of recovery is the remit of the SEC, but a number of the provisions proposed in Rule 17ad-26 do not reflect thoughtful enhancements to those plans. Most noteworthy in that regard is the requirement of 'testing,' but more importantly, if there is to be such a regulatory requirement 'testing' needs to be clearly defined. "Testing" comes in many varieties. The most rigorous are those periodic technology and connectivity focused 'business continuity tests' which demonstrate the ability of the clearing agency to 'fail over' to its alternative processing environments within the required two-hour time to recovery. Similarly rigorous is the testing required for the development of a new margin or clearing fund model, or the enhancement to an existing model, as well as the periodic independent validation of all such models. Default management testing is also done periodically with significant participation by clearing members, credit and liquidity providers and even end-user bidders in auction drills. Other forms of interaction what fall under the label of 'testing' are 'compliance testing' by personnel from the 'second line of defense' and 'internal audit testing' by the 'third line.' The challenge that arises from the inclusion of broad generic terms without specific definition is that inevitably the staff of the Division of Examinations imposes their own definition. Experience has shown that these are not always pragmatic nor cost effective relative to the benefit desired.

If the Commission actually believes that something as self-evident as the need for periodic 'testing' of something as important as recovery plans cannot be left to the experienced business judgment of registrants, then the proposed regulation should define the term 'testing' to involve periodic rigorous 'tabletop' exercises that step through all the elements of the clearing agency's

recovery plan in the context of each of the extreme scenarios that were utilized in developing the plan and its associated tools in the first instance. Requiring the participation of key external third parties (which may, but need not always, include settlement banks, liquidity providers, clearing members, technology vendors, market-makers, exchanges, and trading venues) in such 'tabletop testing' is sensible. And rather than mandating something as trivial as the format of the notification to the Commission that a recovery plan is about to be executed (clearing agency staff are happy to agree based on a simple oral request to notify Commission personnel in whatever format has utility), why not mandate that Commission staff be invited to participate in the periodic 'tabletop tests' directly? Of course, detailed notes will be kept on each of these tests, 'lessons learned' will be discussed, necessary enhancements to the documented procedures will be put forth, and all this will be shared with senior management and the relevant Board Committees and the Board itself. All of which is subject to subsequent review by Examination staff, but how much more informative if relevant Commission staff participate in something as critical to the safety and soundness of the US financial markets as these periodic tabletop tests of Clearing Agency registrants directly?

It is instructive, in light of our first section, to note the statement on page 34 of the rule proposal: "The Commission has observed that the covered clearing agencies have, to a great degree, converged in terms of the types of elements that are included in each plan." Given the Commission's rule filing and examination processes it is inconceivable that the only way to achieve its objectives in this area is by adding to the burden associated with an entire fresh level of rulemaking and registrant rule change submissions, review and approvals.

The rule proposal goes on to bemoan a lack of identification of specific staffing that will provide the designated 'critical services' documented in the various clearing agency RWPs. Clearly, however, those staffing requirements are documented and well understood within each relevant clearing agency. Indeed, they are likely designated as 'critical staff' in the various human resources systems. We know this information exists just by looking at the published income statements of each CCA and realizing that compensation expense is either the largest or the second largest (next to technology) expense. Since part of the existing RWP requirements are to identify the ongoing expenses and requisite supporting capital of the entity in 'recovery' once the non-critical functions have been stripped away, it must be the case that a function-by-function if not person-by-person accounting for the associated compensation expense exists. Given the volume of employee turnover and new initiatives, these personnel designations likely change with some regularity making their specific identification within the RWP simply an exercise in superfluous bookkeeping. Further on the staffing front, the proposal seeks to include in RWPs the requisite employment agreements with all identified 'critical staff' to provide reasonable assurance that they will stay in place until recovery or resolution is complete. The recent experience at a large household name social media company should make clear that even the most lucrative employment agreements are rarely sufficient to get highly in demand skilled employees to stay on board a 'sinking ship.' Furthermore, certain CCAs have organized labor agreements in place with many of their employees which would likely require time consuming renegotiation in order to satisfy this provision.

Finally, the Commission's proposal seeks to require that a CCA 'ensure timely implementation' of the RWP. Even were 'timely' a defined term, this provision assumes that the management,

staff and Boards of each CCA are not already highly motivated to complete the recovery process in as timely and effective a means as humanly possible. Apparently, there is some thought that upon the manifestation of the next systemic financial crisis senior CCA management will all put in for vacation! The people who work at these critical market infrastructure organizations are highly professional individuals who take tremendous pride in their work and in the quality of service that they provide to the markets and to market participants. Most of them could find more lucrative, significantly less stressful and devoid of constant regulatory prodding roles elsewhere in the economy. They can be trusted to work tirelessly to complete 'recovery' as expeditiously as humanly possible. They do not need a clause in a regulation to compel that outcome.

Critical Vendors:

There are two types of critical vendors relevant to all the sections of this rule proposal. These are technology vendors and secondary quotation and information vendors. With respect to technology vendors the most important of these are the large global 'Cloud' vendors. Their scale, elasticity, level of resources in both engineering and critically information security and their use of customized frequently self-manufactured chip sets unavailable in the open market position them as the clearly superior source for running SIFMU operating and applications software. Of course, virtually the rest of the major participants in the global economy see the same advantages in these providers. Each 'Cloud' vendor provides tightly engineered unique features, running from command-and-control infrastructure to storage and network interfaces that form the 'stickiness' that allow them to differentiate themselves and provide strong non-economic bonds for client retention. At present, while it is possible to operate separate genre of application software on different 'Cloud' providers, it is extremely challenging, requiring significant time for deployment and rigorous testing, to move a set of tightly woven operational software applications from one 'Cloud' provider to another.

While the existence of several major competitors in the 'Cloud' computing space would appear to support the ability to move among providers in the highly improbable event of a catastrophic failure of one of them, the above constraints make that a time-consuming process for all users. Furthermore, unlike the horizontal utility type CCAs (regardless of ownership structure) each of these vendors is a highly successful profit maximizing organization. Notwithstanding their tremendous scale and ability to support existing customers with 'capacity on demand,' such vendors do not make a habit of operating with sufficient spare capacity to accommodate a significant piece of their competitors' business quickly and easily. Which in turn means that there is likely to be a significant 'crowding out' effect: with a limited size transfer 'pipe,' who is going to say that financial infrastructure should be prioritized for such a move ahead of hospitals and medical care providers, emergency services or transportation networks? All of which strongly suggests that these 'Cloud' providers are themselves systemically important, not just to the financial services industry but to the economy as a whole and need to be regulated as such. Likely either or some combination of the Treasury or Homeland Security Departments have the strongest domain expertise in this area and are best positioned to provide such oversight.

In the meantime, the Commission is correctly focused on the terms of the contractual relationships among CCAs and these technology vendors, which should include not only

providers of 'Cloud' infrastructure services, but also large-scale software development and software testing vendors. To date, as certainly Commission staff are aware from their oversight and the eventual 'no objection' to the Options Clearing Corporation's Advanced Notice filing to at a future date move critical processing to a multi-region 'Cloud' provider (with an off-cloud back-up installation); CCAs and technology providers have negotiated in good faith and achieved contractual relationships that support flexible business continuity requirements as well as RWD objectives. While it is not at all clear that additional specific regulation is required in this area, to the extent the Commission determines that it is, such regulation should be entirely principles based and not attempt, through either rules or examination 'findings' documents, to mandate specific provisions. Doing so will subject the CCAs to material 'hold out' risk when negotiating with far larger and financially much stronger vendor companies. Failure to allow flexibility may ultimately lead to ideal contractual provisions with a set of highly suboptimal vendors.

The challenge with secondary quotation and information vendors is different. For equities and equity derivatives, the primary sources of price data are the listing exchanges and trading venues, which are strongly incented to provide such data on a timely basis to the various relevant CCAs, although consolidation may be an issue. The markets for government, municipal and corporate fixed income securities, repurchase agreements, and securities lending do not predominately operate on such exchanges. As a result, CCAs, like all other market participants, are highly dependent on secondary quotation and information vendors for timely and accurate information about the specifications of such instruments, the current and historical prices and risk factors associated with such instruments, as well as information about volume and concentration of participants. The Commission has spent significant resources and rulemaking initiatives on the cost structure and timeliness of exchange provided price and related market data, but this does not appear to have been the case with respect to the equally important secondary quotation and information vendors. Notwithstanding the importance of this information to many types of market participants and market infrastructure providers, these vendors appear to be free to charge 'what the market will bear.'

In addition, certain of these secondary quotation and information vendors have contractual terms that can be particularly onerous. The most significant among those are some of the charges for so-called 'derivative works.' In determining the margin requirement for an instrument with convexity it is important to have clean data on the shape of the relevant and historic yield curve including the characteristics of the bid/offer spreads at critical points along that curve. In addition to relatively straightforward inputs such as price (including bid/offer), volatility, implied volatility and time to maturity, to fully accurately calculate the margin requirement for an exchange-traded options portfolio information about the so-called 'risk free rate' reflected in the relevant yield curve as well as the 'borrow cost' for the underlying security as reflected in the securities lending market among other 'risk factors' is required. These inputs are generally only available from secondary quotation and information vendors. As the Commission's rule proposal notes, the CCAs are not just required to produce this information for their internal use in determining clearing member account level margin requirements, this information must also be disseminated to both clearing members and market participants. The challenge is that certain of these vendors consider the margin requirement that is derived from these 'risk factors' they have supplied, regardless of how relatively minor those particular factors may be in the ultimate

calculation, as a 'derivative work' of the vendor. It is not sufficient that the CCA has paid for the risk factor data in the first instance, such vendors seek to make each clearing member and market participant receiving this margin information from the CCA pay as well. And in extremis, where the clearing member or market participant is itself unwilling to pay the vendor, there is an expectation that the CCA make the payment on behalf of the ultimate data user. Given the concentration of vendors in this segment, absent regulation preventing these types of contractual terms the Commission's intent to assure margin and related data is available notwithstanding single vendor failure seems at risk.

Intraday Margin:

While there is a need for enhancements to the financial flows among CCAs and their direct market participants during the trading day, referring to these as simply 'margin' related is insufficiently precise. There are a number of issues that require examination. First is the need for stronger certainty as to timing. Second is the question of how late in the day such liquidity demands can be reasonably made. Third is the potential for CCAs being a 'liquidity sink.' Fourth is the extent to which the current day's transactions are to be included in these intraday funds flows.

The current 'as needed' provisions for 'marking-to-market' start of day clearing member account portfolios during the trading day demonstrate with certainty there will be days on which the value of such movements are an imperative element of a robust financial safeguards system. Juxtaposed against that need is the fact that surprise demands for large amounts of cash are extremely challenging for broker/dealer treasury units, particularly on volatile days when there are a large number of different demands all requiring urgent attention. Even though the amounts being moved would be insignificant on a majority of trading days, there is great virtue to a routine schedule of intraday funds flows among a CCA and its participants at a time certain. Rather than broker/dealer treasury units having to remember to figure out whether, when and how much; the first two elements become known and the 'how much' element can become the subject of robust modeling of internal data in advance of the transmission of the request from the CCA. While this should not preclude the occasional need for an additional set of intraday cash and collateral movements in cases of truly extreme market moves, absent an intraday market reversal, the existence of an earlier scheduled set of cash flows should reduce the size of the subsequent demand and increase the level of comfort toward the coverage provided by already on deposit margin collateral.

The second question is more challenging. The geographic positioning of the International Date Line has made the United States the last set of markets to close around the world each trading day. This fact, plus the dominance of the US Dollar as the world's primary reserve currency, the timing of the close of the Fedwire for cash and securities and the lack of late in the US day sources of deep pools of liquidity means that US treasurers, in contrast to their Asian and European counterparts, have smaller and smaller sources of robust liquidity as the afternoon wears on, and a parallel need to have completed investments of free cash as well as repo or lending of collateral earlier in the afternoon. With the secondary securities markets open until 4:00 p.m. Eastern, the concentration of transaction volume close to or at the closing auctions and for all practical purposes no constraint on the timing of relevant news events, significant market

movements late in the day and well past the scheduled intraday cash flows are not infrequent. Careful trade-offs must be weighted between the need to bolster the funds at the CCP versus the possibility that a clearing participant which would have lots of access to liquidity the following business morning defaults on an intraday call because that access was not available late in the day. This issue is further compounded, although not entirely negatively, by the fact that US CCPs settle in commercial bank rather than central bank money.

While the Commission's primary responsibility relevant to the current rule proposal is for the operational and financial integrity of the relevant CCAs, there are other macro-financial considerations that need to be made. Primarily among these is the need to prevent CCPs from becoming 'liquidity sinks' as they did during the stock market 'crash' in 1987. The CCPs role as the 'buyer to every seller and the seller to every buyer' means that both mark-to-market and premium pass through constitute a 'zero sum game.' If the only thing a CCP is doing on an intraday basis is calling clearing member accounts for losses, and not paying out cash flow gains or releasing margin collateral that has become 'excess,' then it is absorbing liquidity like a giant sponge and not sourcing any liquidity or collateral that might be available for those who need it. The CCPs own stronger situation comes at a considerable cost to the health of the overall system. The growing use of hedges and cross-market portfolios make bidirectional flows increasingly important. Likewise, coordinating the timing of both scheduled and 'as needed' flows across linked CCPs in order to avoid unnecessary liquidity timing gaps.

Which brings us to the fourth issue which is the most challenging. Given the current volume levels in the industry, and at least in the equity and equity derivatives markets the not infrequent shifts in the trading popularity of certain 'names' (i.e. the underlying security and its associated derivatives) it is entirely possible if not even likely that significant new portfolio components will be opened up during a trading day. The protection of the CCP would be enhanced if the margin requirements for such new portfolio components were calculated and collected either by 'locking up' excess collateral or by a cash call to the relevant settlement bank. Likewise, the liquidity of clearing members and their ability to utilize such liquidity for other needs would be enhanced if portfolio components that had been liquidated, or risk characteristics reduced through offsetting positions, were brought into such intraday margin calculations.

There are two relevant challenges here. The first relates to the above issue of how late in the day it is reasonable to make such calculations and the associated movements of cash and collateral. Even in a world of nearly instantaneous construction of portfolio components and margin calculations (which does not yet exist), by 4:00 p.m. Eastern the FedWire for securities movements has been closed for 45 minutes and the DTC is scheduled to perform its settlement cycle in 15 minutes. The ability of broker/dealer treasurers to get access to liquidity or collateral late in the day becomes significantly more expensive (a material barrier for smaller entities) and likewise the ability to put freed up collateral and cash to good use. The further back from the close of trading that the 'cutoff' for including current day transactions into an intraday margin calculation (scheduled or ad hoc), the greater the probability that new portfolio components are excluded and liquidated and risk reduced portfolio components are ignored. Among other parties, this may be significantly impactful for market-makers in less liquid securities that trade to 'go home risk flat' but may have significant unhedged exposures at any point in time prior to

the close. Likewise so-called 'day traders' who open positions at one point in the day but wait to the surge of liquidity at the end-of-trading to close their positions out.

The second challenge relates to the proclivity among a number of institutional and high net-worth investors to execute through the facilities of one broker/dealer but custody or hold positions through one or more different broker/dealers. The post-trade transactions to move the positions to the right 'home' are highly automated but usually take place late in the trading session if not after the close, still well prior to the processing of the 'overnight' portfolio construction and margin calculations. In busy and high volatility trading days processing these transactions tends to have a lower priority among certain clearing members, which of course compounds the potential magnitude of a position in the wrong 'home' from an intraday margin perspective.

Additional complications relate to the potential inaccuracy or incompleteness of information about 'spread positions' among risk offsetting instruments, as well as the quality, completeness, and availability of certain less common risk factor data on an intraday basis. There are no easy nor immediate responses to these challenges. As such the Commission's rule drafting, as well as its examination protocols, need to be flexible and look to the operational expertise and the existing strong incentives to promote financial integrity that CCA staff, management and Boards possess.

Enumerated Questions:

The author has, and strongly suspects the readers may share, a lack of patience with respect to addressing each of the forty-four (44) questions contained in the proposed rule document. To that end below are brief responses to a select set.

#1. Monitoring: There is no need for additional regulation in this area, existing procedures are sufficient.
#2. Intraday Margin Calls: any and all cash flows among CCPs and clearing members need to be bidirectional.
#3. Thresholds: the CCAs have the relevant expertise and flexibility to set risk thresholds.
#7. Unavailable inputs: CCAs already keenly understand the need for this.
#9. Exclusive control: As noted above, certain key inputs to margin calculations are only available through third party providers. Other than makeshift transitory substitutes, they cannot be provided within the exclusive control of a covered clearing agency.
#10. Prescribed RWP contents: There is no need beyond what has already been done given the rule modification and examination protocols already in place.
#11. Prescribed elements: Each individual CCA is best positioned to determine these.
#14. Incentives: Strong incentives for relevant stakeholder alignment already exists.
#16. Viable cohesive strategy: The existing regulation strongly implies the need for this and Board governance processes are sufficient to ensure it occurs.
#19, 20 and 21: Additional specifics: the existing regulation sufficiently covers this territory.
#22. Specify scenarios: CCAs have strong incentives to include all relevant scenarios and modify them as environmental and other relevant considerations change.

#23. Specify documentation: the proposal is a 'make work' exercise without merit.
#24. Specify tools: CCA specific tools are already well specified in both RWPs themselves as well as published documentation about their operation.
#26. Specify success criteria: Successful recovery of a CCA is self-evident.
#29. Specify timely implementation: Strong internal and external incentives already exist to promote timely implementation of CCA RWPs.
#31. Specify form of notice: This is silly—CCAs will do whatever Commission staff desire and respond to simple oral requests. CCA staff are in communication with Commission staff no less than biweekly.
#32. Mandatory participation in testing: As long as 'testing' is defined as annual tabletop exercises CCAs should be allowed to make participation by relevant stakeholders mandatory as needed.
#33. Review period: Board review of CCA RWPs should occur every 12 months.
#40. Optional use data plans: Secondary quotation and information vendors do not currently offer such flexible pricing provisions for all of the requisite data.
#44. Cost to comply: As a general matter the cost estimates in the document for the CCAs to conform to the proposed rules are ridiculously low. Rule change processes require the participation by a much broader cross-section of CCA management and staff. Furthermore, the 'informal' interaction with T&M staff frequently continues for multiple months, always involving Legal Department staff and frequently requiring the engagement of domain experts as well. All this happens before a formal submission is permitted, and the post formal submission process also requires a significant amount of interaction, although that process draws more on Legal than domain expert resources. A two order of magnitude multiplier on the current document's estimates would not overcount the cost to comply.

Conclusion:

The topics included in the Commission's document supporting the proposed rule related to "Covered Clearing Agency Resilience and Recovery and Wind-Down Plans" are important components of the financial and operational safety, soundness and continuity of the post-trade financial infrastructure of the United States. As such it is useful that there be an opportunity for thorough review and public input. Many of the proposal's provisions are already well covered in existing rules as well as rule change, review and examination processes carried out by the Commission's staff, and as such additional rulemaking is unnecessary. Other provisions require a more comprehensive examination of the scope and targets of existing regulation. The statements at the top of page 77 of the document are self-evident: "Absent proper risk management, a clearing agency failure could destabilize the financial system. As a result, proper management of the risks associated with central clearing helps ensure the stability of the U.S. securities markets and the broader U.S. financial system." Critically, the document in its present form does not meet the Commission's burden of proof to show that there are current unaddressed inadequacies sufficient to merit additional rule making. Thank you for the opportunity to set forth these comments.

Best regards,

John P Davidson III