July 17, 2023

VIA ELECTRONIC SUBMISSION (Link)
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
USA

Re: Securities and Exchange Commission's Proposed Rule on Covered Clearing Agency Resilience and Recovery and Wind-Down Plans

The Global Association of Central Counterparties ("CCP12") is the international association for CCPs, representing 42 members who operate over 60 individual central counterparties (CCPs) across the Americas, EMEA, and the Asia-Pacific region.

CCP12 appreciates the opportunity to respond to the Proposed Rule on Covered Clearing Agency Resilience and Recovery and Wind-Down Plans[1] ("the Proposal") proposed by the Securities and Exchange Commission ("SEC" or "Commission"). Among CCP12's members are all seven currently existing Covered Clearing Agencies ("CCAs") that would be subject to the Proposal.

First and foremost, CCPs' risk management practices must be tailored to the unique characteristics of their structures, offerings (e.g., products cleared), and operations. Resiliency, recovery, and wind-down related regulations should focus on prioritizing the safety and efficiency of CCPs and supporting the stability of the broader financial system, and, ultimately, focus on risk management practices that mitigate the likelihood of an event leading to the need for recovery or wind-down in the first place. CCP12 is generally supportive of the Commission's ongoing work to reinforce the safety of the financial markets, and we appreciate the flexibility and discretion that the Commission has built into many components of the Proposal. We believe that approach is appropriate in view of CCAs' risk management expertise and the unique characteristics of each CCA's structure and markets served. However, we do believe the Proposal could be enhanced to reduce potentially overly-restrictive requirements and further harmonize the Proposal with existing and proposed Commission rules.

CCP12 comments on Intraday Margining: Amendments to Rule 17Ad-22(e)(6)(ii)

The Commission proposes to amend Rule 17Ad-22(e)(6)(ii) to require that each CCA "cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, marks

[1] SEC, Proposed Rule on Covered Clearing Agency Resilience and Recovery and Wind-Down Plans (May 2023), available at Link.

participant positions to market and collects margin, including variation margin or equivalent charges if relevant, at least daily, monitors intraday exposures on an ongoing basis, and includes the authority and operational capacity to make intraday margin calls as frequently as circumstances warrant, including when risk thresholds specified by the covered clearing agency are breached or when the products cleared or markets served display elevated volatility."[2] While it is vital that CCAs have the authority and operational capacity to make intraday margin calls as provided pursuant to current Rule 17Ad-22(e)(6)(ii) to mitigate counterparty risks, each CCA should have the ability to tailor their intraday margin call processes to the characteristics of the markets it clears (e.g., market structure), considering any negative procyclical effects and impacts to the stability of the broader financial system.

With respect to the requirement that a CCA's written policies and procedures be reasonably designed to ensure that it monitors its exposures to its participants on an ongoing basis, monitoring exposures to a CCA's participants is part of a CCA's comprehensive sound risk management practices and there should be no further prescription of a particular time period or frequency that would constitute an obligation of ongoing monitoring.

CCP12 welcomes the Commission's approach and agrees that CCAs should be able to tailor their monitoring and margin collection practices to their particular products cleared and markets served and have discretion in determining what monitoring frequency is appropriate to their particular markets. In this context, it is also vital CCAs define risk thresholds and elevated volatility under their respective procedures, as the Proposal foresees. The timing of intraday margin calls and frequency of ongoing monitoring should align with each CCA's scheduled settlement, initial margin, and variation margin practices to support financial stability in both normal and volatile market conditions.

CCP12 comments on Inputs to Margin Methodologies: Amendments to Rule 17Ad-22(e)(6)(iv)

As proposed, amended Rule 17Ad-22(e)(6)(iv) would require CCAs to have procedures in place which "shall include the use of price data or substantive inputs from an alternate source or, if it does not use an alternate source, the use of an alternate risk-based margin system that does not similarly rely on the unavailable or unreliable substantive input."[3] CCP12 is of the view that CCAs should have reliable sources of price data and other substantive inputs. To achieve that goal, the Commission should focus on ensuring that CCAs have reasonably designed procedures for addressing circumstances where these sources are not available or reliable. By refocusing a final rule on policies and procedures, the Commission could achieve its regulatory goals while empowering CCAs to consider the unique aspects of their margin system in determining the relevance of "price data" and "other substantive inputs" from third parties to their system. In addition, we believe that CCAs should have discretion to determine whether an input is deemed to be a "substantive input." The CCA is best positioned to assess the impact of any given input on the functioning of the margin system. Drawing bright line rules would compel CCAs to obtain, often at great expense, alternate data sources for inputs with limited utility and minimal or no impact on margin calculations.

[2] *Ibid.*, p. 20.
[3] *Ibid.*, p. 127.

We also request that the Commission confirm that any final rule does not create an expectation that CCAs should develop an alternate risk-based margin system. The development of such an alternative system would require a CCA to effectively maintain two very distinct margin systems that is likely very resource intensive and time consuming.[4]

CCP12 comments on recovery and orderly wind-down plans ("RWP"): Proposed Rule 17ad-26

As a general comment, any recovery and orderly wind-down regulations should recognize that CCAs' on-going risk management practices are designed to provide for the continuity of their critical services and support stability of the broader financial system. CCAs maintain robust default management plans and business resiliency plans that mitigate the risk that a default or other event would trigger recovery, even where extreme but plausible conditions prevail.

i. **Service Providers**: The definition of "service provider" in the Proposal, which includes any person that is obligated to the CCA "in any way related" to the provision of the CCA's critical services, is overly broad in scope. This expansive definition appears inconsistent with the aim of the Proposal's targeted requirement that a CCA's RWP "identify and describe any service providers upon which the covered clearing agency relies to provide its critical (…) services"[5]. An overly broad definition of "service provider" could inappropriately bring within the Proposal's scope numerous underlying service providers (e.g., internet service providers) and other indirect and downstream services. These service providers likely do not have a direct impact on the continued performance of critical service(s) in recovery or orderly wind-down. Therefore, any final rule should make clear the focus is on service providers that are core to the offering of a CCA's critical services.

   CCP12 also observes that the application of the Proposed Rule to "service providers upon which the covered clearing agency relies to provide its critical. . . services"[6] creates a similar but not precisely overlapping cohort of relevant providers as compared to other recent Commission proposals, including the CCA governance proposal[7] and Reg SCI.[8] We strongly believe that the Commission should address these various inconsistencies in the defined scope of relevant providers by attempting to harmonize the definitions and scope across the various proposals in a manner that is consistent and reduces the burden on CCAs seeking to comply with all applicable rules.

   In addition, we agree with the SEC's focus on service providers that are core to offering a CCA's critical services and therefore CCAs typically have procedures in place to address unavailability of certain service providers. While CCAs should of course have these procedures in place and, to the extent possible, have contractual provisions that support the

[4] By way of example, any alternative risk-based margin system would require its own technological investments, as well as a separate testing and training regimen.
[5] SEC Proposed Rule, *op. cit*., p. 31.
[6] *Ibid.*
[7] SEC, Proposed Rule on Clearing Agency Governance and Conflicts of Interest (August 2022), available at Link ("Service provider for critical services").
[8] SEC, Proposed Rule on Regulation Systems Compliance and Integrity (March 2023), available at Link ("third-party providers that provide functionality, support or service, directly or indirectly, for any [SCI Systems]").

continuity of services from service providers, CCAs cannot "ensure that such service providers would continue to perform in the event of a recovery and during an orderly wind-down." CCP12 would therefore suggest that the Commission revise the Proposal and require instead that as to service providers that directly support critical services, CCAs establish, implement, maintain, and enforce written policies and procedures reasonably designed to facilitate consideration of contractual provisions with such providers that, subject to continuation of payment by the CCA, obligate them to continue to perform in the event of a recovery and during an orderly wind-down.

ii. **Testing:** CCP12 agrees that it is critical that CCAs are confident that their RWPs would be effective in an actual recovery or orderly wind-down event. Default management and business continuity testing exercises, in conjunction with the regular review of a CCA's RWP, provide effective means to affirm that a CCA has appropriate procedures and structures in place to support the continuity of its critical services in accordance with its RWP and, where applicable, identify and make any necessary enhancements to its RWP. CCAs must retain the flexibility to determine how their RWP testing should be conducted, including whether and how to include participants and third-party stakeholders, based on what the CCA determines is necessary and appropriate to ensure the ongoing viability and comprehensiveness of its RWP.

CCA RWP testing is typically comprised of various type of exercises, including default management testing pursuant to Rule 17Ad-22(e)(13) and testing business continuity plans. Therefore, any final rule should make clear that a CCA has discretion to rely on these testing practices to satisfy proposed Rule 17Ad-26(a)(8). It is reasonable to expect that different practices would be employed to test different aspects of a CCA's RWP, such as table-top exercises that may be conducted with or without the participation of clearing members. Notably, there are various other ways in which participants and other stakeholders can be educated in default management and the CCA's recovery and orderly wind-down processes; direct participation in testing of the RWP is not necessarily the most effective way to do so, and requiring such participation may distract the CCA from optimizing its RWP testing. More broadly, tests that include clearing members and other stakeholders may not be appropriate or beneficial for aspects of a CCA's RWP that do not directly impact clearing members and other stakeholders. These aspects of a CCA's RWP – and the testing of them – can also involve confidential and highly sensitive information that could make inclusion of clearing members and other stakeholders inappropriate.

In light of the above, CCP12 requests that the Commission clarify that with regards to testing the wind-down portions of CCAs' RWPs and associated procedures, a CCA retain the discretion to determine what that testing would be comprised of and, for the avoidance of doubt, should not require any participation of clearing members or other stakeholders. Furthermore, to the extent a CCA's RWP includes legal processes that do not lend themselves to standardized operational testing processes (e.g., entering into asset sale

agreements), the CCA should have discretion to determine whether it is necessary (or even feasible) for the CCA to do so.

iii. **Notification to the Commission:** While CCP12 welcomes the Commission's proposal to include in the CCA RWP procedures which will ensure clear and efficient notification to the Commission, we believe the proposed requirement to inform the Commission when the CCA is only considering initiating a recovery or orderly wind-down would cause unnecessary ambiguity and uncertainty. Such a notification should only be required once the CCA has made the decision to initiate a recovery or orderly wind-down.

About CCP12

CCP12 is the global association for CCPs, representing 42 members who operate over 60 individual central counterparties (CCPs) across the Americas, EMEA, and the Asia-Pacific region.

CCP12 promotes effective, practical, and appropriate risk management and operational standards for CCPs to ensure the safety and efficiency of the financial markets it represents. CCP12 leads and assesses global regulatory and industry initiatives that concern CCPs to form consensus views, while also actively engaging with regulatory agencies and industry constituents through consultation responses, forum discussions, and position papers.

For more information, please contact the office by e-mail at [redacted] or through our website by visiting www.ccp12.org.

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