THE FOUNDATION FOR SECURE MARKETS

Options Clearing Corporation
125 S. Franklin Street, Suite 1200
Chicago, IL 60606
312 322 6200 | theocc.com

July 17, 2023

By Electronic Delivery

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

Re: RIN 3235-AN19 Covered Clearing Agency Resilience and Recovery and Wind-Down Plan

Dear Ms. Countryman:

The Options Clearing Corporation ("OCC") appreciates the opportunity to submit these comments on the above-reference proposal ("Proposal" or "Proposed Rules")[1] under the Securities Exchange Act of 1934 ("Exchange Act"). The Proposal would (i) require covered clearing agencies ("CCAs")[2] to be able to monitor intraday exposure and be able to make intraday margin calls as frequently as warranted; (ii) require CCAs to have alternative sources of data or an alternate risk-based margin system in the event that substantive inputs from third-parties to a CCA's margin system are unavailable; and (iii) define certain required components of each CCA's recovery and wind-down plan ("RWP").

I. About OCC

Founded in 1973, OCC is the world's largest equity derivatives clearing organization. OCC operates under the jurisdiction of both the SEC and the Commodity Futures Trading Commission (the "CFTC"). As a registered clearing agency under the SEC's jurisdiction, OCC clears and settles transactions for exchange-listed options. OCC is subject to Regulation SCI as an SCI entity. As a registered derivatives clearing organization under the CFTC's jurisdiction, OCC clears and settles transactions in futures and options on futures. OCC also provides central counterparty clearing and settlement services for securities lending transactions. In addition, OCC has been designated by the Financial Stability Oversight Council as a systemically important financial market utility ("SIFMU") under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. As a SIFMU, OCC is subject to prudential regulation by the Board of Governors of the Federal Reserve System. OCC is recognized by the European Securities and Markets Authority as a Tier 1 central counterparty clearinghouse ("CCP") established in third countries under Article 25 of the European Market Infrastructure Regulation ("EMIR"). OCC operates as a market utility and is owned by five exchanges.

II. Summary and Overall Comments

As a SIFMU and the sole central clearinghouse for U.S. exchange-listed options, OCC supports the Commission's goal of ensuring that the CCA standards[3] reflect, to the degree appropriate, developments in

[1] RIN 3235-AN19 Covered Clearing Agency Resilience and Recovery and Wind-down Plans (May 17, 2023), 88 FR 103 (May 30, 2023) ("Release").
[2] A covered clearing agency is a registered clearing agency that provides the services of a central counterparty or a central securities depository. 17 CFR 240.17Ad-22(a)(5). OCC, the sole central counterparty for U.S. exchange-listed options transactions, is a covered clearing agency.
[3] *See* 17 CFT § 240.17Ad-22.

Options Clearing Corporation
125 S. Franklin Street, Suite 1200
Chicago, IL 60606
312 322 6200 | theocc.com

markets and relevant international standard setting. Any changes to the CCA standards, however, should be approached in the context of the demonstrated stability and resilience of existing CCAs and their core services. The Commission should carefully consider changes to existing requirements to avoid potential unforeseen consequences that could come from the addition of overly prescriptive requirements that impose one-size-fits-all mandates rather than allowing CCAs to engage in their core risk management functions using their knowledge of and expertise in the products and markets they serve.

In many respects, the Commission has struck this balance in the Proposal. As proposed, the intraday margin requirements provide sufficient discretion – in determining surveillance intervals and margin call thresholds – to calibrate their margin practices in a manner appropriate to the markets they serve and products they clear, while still fulfilling the Commission's goal of ensuring that they have the operational capability to address material developments in the risks they are bearing. In finalizing the rule, the Commission should retain this discretion, and recognize the importance of allowing CCAs to consider, in setting their intraday margin practices, not just potentially fleeting market movements, but also the benefits of maximizing, to the extent possible, predictability in liquidity demands for clearing members, and avoiding the potentially procyclical effects of repeated, unscheduled margin calls.

With respect to the alternative data source requirements, OCC recognizes the concerns that animate the Proposal and broadly supports the Commission's goal of ensuring that CCA margin models will remain operative even when certain third-party data becomes unavailable. OCC, as is likely true of nearly all CCAs, already identifies substantive inputs into its model and potential alternative sources of – or alternatives to - those inputs. Those determinations are made based on OCC's understanding of its margin model's operation and the impact of each substantive input into that model. In certain instances, an alternative source of a precise, like-for-like substitute for a certain substantive input may not be available or may be prohibitively expensive to obtain when weighed against the impact of that input on the model's performance; in such cases, a manual or intermittent process may substitute for an automated feed without material impact on the model's effectiveness. In finalizing the Proposal, the Commission should recognize the need for CCAs to retain flexibility to make these judgments based on their own needs and the parameters of their proprietary models.

Similarly, the Proposed Rules concerning RWP contents generally provide CCAs with flexibility to tailor their RWPs to address their unique circumstances, and in particular the fact that many CCAs act as the sole central counterparty in the market(s) they serve. As such, OCC is generally supportive of this aspect of the Proposal, which broadly reflects known best practices for CCP RWPs. Below, we suggest minor amendments to the Proposal to ensure that any final rule reflects the importance of this discretion and the need to balance ongoing assurance and verification of components of the RWP with the significant amount of time and required resources that would be involved with any additional, separate testing requirement.

Below we offer more detailed comments on the Proposed Rules. Thank you again for the opportunity to contribute to this rulemaking.

III. Detailed Comments on the Proposal

A. Proposed Amendments to Rule 17Ad-22(e)(6)(ii): Intraday Margin

Proposed Rule 17Ad-22(e)(6)(ii) would require that each CCA "cover . . . its credit exposures to its participants by establishing a risk-based margin system that, at a minimum. . . [m]arks 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." Existing Rule 17Ad-22(e)(6)(ii) does not address the frequency with which exposures must be monitored, and only mandates that CCAs have the operational capacity to make intraday margin calls "in

Options Clearing Corporation
125 S. Franklin Street, Suite 1200
Chicago, IL 60606
312 322 6200 | theocc.com

defined circumstances."[4] OCC recognizes the critical importance of CCAs being able to effectively manage their risk in response to intraday market developments, and therefore generally supports the proposed revisions to Rule 17Ad-22(e)(6)(ii), and appreciates the Commission's apparent recognition of the importance of CCAs' exercise of discretion in implementing the new requirements. However, we believe the Commission can and should provide additional assurance that CCAs can, in determining whether "circumstances warrant" an intraday margin call, take into account the stability of the broader financial system,[5] including the potential for procyclical impacts.

With respect to the proposed requirement to monitor intraday exposures on an "ongoing basis," OCC agrees with the Commission's determination not to prescribe a particular frequency that would constitute an "ongoing basis" because each "covered clearing agency should be able to tailor its monitoring to the particular products cleared and markets served."[6] The Proposal wisely avoids inflexible, prescriptive requirements; as the Commission recognizes, each CCA will need to consider unique market structure and dynamics, as well as its own risk management processes and methodology, in determining a frequency of monitoring that will "ensure that it is able to collect margin sufficient to cover its participants' exposures."[7] Moreover, market dynamics are just that – dynamic – and may evolve over time in such a manner that a CCA may determine that a different frequency of monitoring is appropriate.

The determination as to whether "circumstances warrant" an intraday margin call may involve both qualitative and quantitative factors, including consideration of potential impacts on the liquidity of clearing members. Periods of market turmoil or elevated volatility can reasonably be expected to impact the markets served and products cleared by multiple CCAs and others CCPs, many of which have significant overlap among their membership. Because of this, a CCA's unscheduled, intraday margin call could lead to or exacerbate a cascading effect as clearing members address multiple such demands, a fact the Commission acknowledges in its own economic analysis of the Proposal.[8] Even in periods of normal market volatility, OCC has observed that liquidity demands on clearing members are potentially more significant in the afternoon than in the morning as a result of similarly-timed, regular margin calls from multiple CCPs. Having the authority and operational capacity to make intraday margin calls is critical to a CCA's ability to manage

---

[4] *See* 17 CFR § 240.17Ad-22(e)(6)(ii).

[5] Title VIII of the Dodd-Frank Act, the Clearing Supervision Act, cites as one of its four purposes "to support the stability of the broader financial system." Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C. 5461−5472.

[6] Release at 22.

[7] *Id.* This discretion is consistent with the approach taken by the CFTC in its rules governing DCOs, including Systemically Important DCOs. *See* 17 CFR 1.39.14(b) ("Except as otherwise provided by Commission order, a derivatives clearing organization shall effect a settlement with each clearing member at least once each business day, and shall have the authority and operational capacity to effect a settlement with each clearing member, on an intraday basis, either routinely, when thresholds specified by the derivatives clearing organization are breached, or in times of extreme market volatility.")

[8] *See* Release at 103 ("To the extent that the proposed amendment results in covered clearing agencies making more unanticipated margin calls, participants may face increased liquidity-management costs. This may potentially result in procyclicality problems that exacerbate market stress: margin calls during periods of declining asset prices may cause participants to sell assets, putting further negative pressure on asset prices and the market that may spill over into other covered clearing agencies and their markets. This stress may be transmitted by participants that are members of more than one covered clearing agency when, for example, a margin call in one market makes a participant sell assets in a different market. The stress may also be transmitted by assets that are linked between markets, such as the link between option prices (OCC) and equity prices (NSCC). Various industry participants have expressed concerns that excessive intraday margin calls, especially unanticipated ones, have the potential to exacerbate liquidity issues for clearing members who would have to post new liquid collateral to the covered clearing agency with little notice.")

Options Clearing Corporation
125 S. Franklin Street, Suite 1200
Chicago, IL 60606
312 322 6200 | theocc.com

risk in the most challenging conditions, and OCC's rules include authorization for such intraday margin collection.[9] However, while OCC agrees with goal of ensuring that this capability can be exercised when and as needed, we are concerned that imposing a requirement to establish strict quantitative thresholds that will trigger an otherwise unscheduled margin call would prevent the CCA from applying its judgment and expertise to determining whether the benefit of collecting that margin for its own purposes at that moment outweighs these possible procyclical impacts. These effects can be mitigated to some extent by avoiding, to the extent consistent with sound risk management principles, unscheduled margin calls, thereby enabling clearing members to manage liquidity flows to align with demand.[10] As such, we suggest that the Commission explicitly confirm that, consistent with the text of the Proposed Rule, a CCA can satisfy the requirement concerning margin calls by having the authority and operational capacity to make such margin calls when risk thresholds are breached, but that CCAs may exercise judgment in determining whether and when to actually make such calls, taking into account all relevant circumstances and using pre-defined criteria. The Commission should further confirm that among such relevant circumstance are the anti-procyclical benefit of maximizing predictability in liquidity demands for market participants, and the potential impact of any such margin calls on financial market stability.[11]

B. Proposed Amendments to Rule 17Ad-22(e)(6)(iv): Availability of Alternative Sources of Substantive Inputs

Proposed Rule 17Ad-22(e)(6)(iv) would require that each CCA "to cover . . . its credit exposures to its participants by establishing a risk-based margin system that, at a minimum. . . [u]ses reliable sources of timely price data and other substantive inputs, and uses procedures and, with respect to price data, sound valuation models, for addressing circumstances in which price data or other substantive inputs are not readily available or reliable to ensure that the covered clearing agency can continue to meet its obligations under this section. Such procedures 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." The Proposed Rule would broaden the requirements of existing Rule 17Ad-22(e)(6)(iv)[12] by expanding its scope to include "substantive inputs," identifying the standard that CCAs must meet when using alternative data sources, and specifying that CCAs must use either alternative data sources or an alternative risk-based margin system.

OCC recognizes the importance of bolstering the resilience of CCAs' margin systems by ensuring they will continue to perform even when certain sources of pricing data or other inputs become unavailable. Contingency planning, including the addition of redundancy when and where appropriate, is a core element of a CCA's risk management program. In certain circumstances, it may be a relatively simple matter of replacing a data feed of security prices from one vendor with a similar feed from another vendor. However, precise "like-for-like" substitution for every substantive input into the model is not always feasible or necessary in designing a resilient margin system. In some instances, alternative sources may not exist, or may be

---

[9] *See* OCC Rule 609.

[10] *See id.* ("Various industry participants have expressed concerns that excessive intraday margin calls, especially unanticipated ones, have the potential to exacerbate liquidity issues for clearing members who would have to post new liquid collateral to the covered clearing agency with little notice"), *citing* Revisiting Procyclicality: The Impact of the COVID Crisis on CCP Margin Requirements, FUTURES INDUS. ASS'N (Oct. 2020), available at https://www fia.org/sites/default/files/202010/FIA_WP_Procyclicality_CCP%20Margin%20Requirements.pdf.

[11] Compare Article 41(1) of EMIR, relating to the margin requirements for EU CCPs, which explicitly acknowledges the need to take into account procyclical effects of margin calls ("A CCP shall regularly monitor and, if necessary, revise the level of margins to reflect current market conditions, taking into account any procyclical effects of such revisions.")

[12] *See* 17 CFR § 240.17Ad-22(e)(6)(iv).

Options Clearing Corporation
125 S. Franklin Street, Suite 1200
Chicago, IL 60606
312 322 6200 | theocc.com

prohibitively expensive or technically difficult to implement when compared to the impact of the input on the margin model. By way of example, OCC's margin system requires some inputs such as interest rates for which the typical daily change will not have a material impact on the final output. As a result, while OCC's margin system updates interest rates on a daily basis, there will not be a measurable impact on margin requirements if an interest rate is not updated for a limited period of time.[13]

It is imperative that CCAs be permitted to use their informed judgment to determine the appropriate substitutions for unavailable inputs in their margin system. Requiring CCAs to develop and maintain an entire alternate risk-based margin system would be prohibitively expensive and operationally burdensome. The Commission should therefore ensure that CCAs have sufficient flexibility to address the need for alternative data sources in a manner that addresses the Commission's policy objectives, is tailored to the markets served and products cleared by the CCA, and is not unnecessarily burdensome. This can be accomplished by altering the wording of Proposed Rule 17Ad-22(e)(6)(iv) slightly, as follows: "Such procedures shall include the use of price data or substantive inputs from an alternate source, and/or of appropriate alternate inputs." This minor amendment to the Proposal would not change the standard that the CCA must meet but would maximize CCAs' flexibility to identify and use the most effective substitutions for unavailable data.

C. Proposed Rule 17Ad-26: Contents of RWPs and Relevant Definitions

We agree that it is appropriate and timely for the Commission to elucidate its observations from its review of CCAs' RWPs under existing regulations, and to address developments in international standard setting since 2016. Recovery and wind-down planning is a critical element of every CCA's risk management function. CCAs, regulators, and the markets more broadly all benefit from CCAs engaging in thoughtful and detailed RWP design. Such a design should not only reflect evolving industry best practices, but also be tailored to the unique structure and circumstances of each CCA. Therefore, OCC supports and appreciates the Commission's approach to identifying specific elements to be included in CCAs' RWPs, which entrusts to each CCA the necessary discretion to focus its RWP on the issues and eventualities that are of most relevance to the CCA, its regulators, and its stakeholders.

Below we offer comments on each of the component parts of the Proposed Rules as they relate CCAs' RWPs. While, as stated above, we broadly support the Proposal's approach, below we propose certain slight modifications to certain provisions, as well as suggestions as to potential guidance from the Commission, to ensure that the Commission's policy aims are met while avoiding overly prescriptive requirements or narrow interpretations that could ultimately reduce the utility of a CCA's RWP.[14]

---

[13] OCC's margin methodology was approved by the Commission in 2021. *See* Securities Exchange Act Release No. 34-91079 (Feb. 8, 2021) (File No. SR-OCC-2020-016).

[14] OCC, as noted above, is registered as a CCA with the Commission and as a DCO with the CFTC. The CFTC recently issued a notice of proposed rulemaking concerning required contents for DCO RWPs ("CFTC RWP Proposal"). *See* RIN 3038-AF16 Derivatives Clearing Organizations Recovery and Orderly Wind-down Plans; Information for Resolution Planning (Jun. 7, 2023), *available at* https://www.cftc.gov/media/8711/votingdraft060723_17CFRPart39b/download. As noted in this section, we believe the Commission has taken a constructive approach to this rulemaking that will result in decision-useful, focused RWPs, to the benefit of all stakeholders. The CFTC RWP Proposal is more prescriptive, and for those CCAs that are dual registered with the CFTC, may lead to the inclusion of information and topics in the RWP that the Commission does not view as core to RWP design for that CCA. We therefore encourage the Commission to engage with the CFTC to harmonize the two proposals to ensure that dual-registered CCA/DCOs obtain the benefit of the Commission's focused approach.

Options Clearing Corporation
125 S. Franklin Street, Suite 1200
Chicago, IL 60606
312 322 6200 | theocc.com

1. *17Ad-26(a)(1): Critical Services and Staffing*

Proposed rule 17Ad-26(a)(1) would require CCAs' RWPs to "identify and describe the covered clearing agency's critical payment, clearing, and settlement services and address how the covered clearing agency would continue to provide such critical services in the event of recovery and during an orderly wind-down, including the identification of the staffing necessary to support such critical services and analysis of how such staffing would continue in the event of a recovery and during an orderly wind-down." OCC agrees that identification of critical services and planning for their continuation in a recovery or orderly wind-down should be the core content of a CCA's RWP. We further agree that any consideration of how a CCA will continue its critical services necessarily requires consideration of how to plan to retain the necessary staff for such efforts. However, like other aspects of recovery and wind-down planning, we believe the *process* for preparing to retain and incentivize critical employees under adverse circumstances is the critical piece of information necessary for both the CCA and regulators and resolution authorities. That is, what is of most relevance for planning, in addition to identifying staffing needs for continuation of critical services, are what retention tools the CCA uses, how it considers retention when setting and negotiating employment terms with essential personnel, and how it tracks the terms of each such employee's employment. These process considerations provide more decision-useful information at any given point in time than lists of specific employees, which may become dated quickly due to shifts in responsibility or normal attrition.

To reflect this, we suggest the following minor wording change to proposed rule 17Ad-26(a)(1): ". . . including the identification of the staffing necessary to support such critical services and analysis of how the covered clearing agency prepares for such staffing ~~would~~ to continue in the event of a recovery and during an orderly wind-down."

2. *17Ad-26(a)(2): Service Providers; 17Ad-26(b): Definition of Service Provider*

Proposed rule 17Ad-26(a)(2) would require each CCA, in their RWP, to " identify and describe any service providers upon which the covered clearing agency relies to provide its critical payment, clearing, and settlement services . . ., specify to what critical services such service providers are relevant, and address how the covered clearing agency would ensure that service providers would continue to provide such critical services in the event of a recovery and during an orderly wind-down, including consideration of contractual obligations with such service providers and whether those obligations are subject to alteration or termination as a result of initiation of the recovery and orderly wind-down plan." Again, we agree that proposed rule 17Ad-26(a)(2) identifies a key component of planning for recovery and orderly wind-down, but believe that it would best accomplish the Commission's objectives to amend the proposed rule to focus on the CCA's relevant processes rather than on conditions at a snapshot point in time.

As an initial matter, we note that proposed rule 17Ad-26(a)(2) is focused on "any service providers upon which the [CCA] relies to provide its critical payment, clearing, and settlement services." Pursuant to proposed rule 17Ad-26(b), "Service provider," in turn, would be defined as "any person, including an affiliate or a third party, that is contractually obligated to the covered clearing agency in any way related to the provision of critical services, as identified by the covered clearing agency in [proposed rule 17Ad-26(a)(1)]." While the proposed definition is quite broad, it appears then that the phrase "upon which the [CCA] relies to provide its critical. . . services" is meant to limit the subset of service providers to be addressed in the RWP;

Options Clearing Corporation
125 S. Franklin Street, Suite 1200
Chicago, IL 60606
312 322 6200 | theocc.com

the Proposal alternately refers to that subset as "critical service providers"[15] and "necessary."[16] As the Commission itself notes, this cohort of service providers would likely overlap with, but not be identical to, the group of service providers defined in several other rules recently proposed by the Commission.[17] We urge the Commission to consider harmonizing these definitions as it moves toward finalization of its various proposals. These similar but subtly different definitions create the potential for confusion and administrative purpose, without significantly advancing the Commission's true interest in focusing a CCA's resources on the identification and management of its relationships with third parties in order to minimize risk to the CCA, its stakeholders, and the markets. Harmonization would promote consistency and compliance by reducing time spent on parsing insignificant differences in requirements, and instead facilitating the development of holistic approaches to managing third-party risk by CCAs.

With respect to proposed rule 17Ad-26(a)(2), CCAs, like almost all regulated entities, rely on third-parties to provide a variety of services that may support the CCA's critical services. The nature of the CCA's relationship to the service provider, the services provided, and the roster of relevant service providers necessarily evolves over time. For example, a service provider may add or subtract service offerings, a contract may expire and be renegotiated, or the CCA may determine to switch providers. We agree with the Commission that planning for recovery and wind-down requires understanding how these relationships will be impacted by entering such a situation. Such an understanding turns on incorporating planning and tracking these relationship terms and conditions throughout the third-party engagement and management process, including when negotiating contracts and considering whether and to who to outsource important functions. In so doing, CCAs employ a variety of contractual terms to maximize predictability and stability in its relationships with its most critical service providers, including in a recovery or wind-down situation. Similarly to proposed rule 17Ad-26(a)(1), we therefore recommend that the Commission slightly alter the language of proposed rule 17Ad-26(a)(2) as follows: "identify and describe any service providers upon which the covered clearing agency relies to provide its critical payment, clearing, and settlement services identified in paragraph (1), specify to what critical services such service providers are relevant, and address the process by which ~~how~~ the covered clearing agency seeks to ~~would~~ ensure that service providers would continue to provide such critical services in the event of a recovery and during an orderly wind-down, including consideration and tracking of contractual obligations with such service providers and whether those obligations are subject to alteration or termination as a result of initiation of the recovery and orderly wind-down plan."

---

[15] Release at 47 ("the Commission believes that the requirement to identify and describe any critical service providers and address how the covered clearing agency would ensure that such service providers would be legally obligated to perform in a recovery or during an orderly wind-down should help regulatory planning in the event of a resolution.")
[16] Release at 45 ("The Commission is therefore proposing to require that an RWP specifically identify and describe such service providers, to ensure that the RWP considers what providers are necessary for the covered clearing agency to continue providing its critical services"); *id.* ("For service providers that are necessary for the covered clearing agency to provide its core payment, clearing, and settlement services, the failure of the service provider to perform its obligations could pose significant operational risks and have substantial effects on the ability of the covered clearing agency to perform its risk management function and facilitate prompt and accurate clearance and settlement.")
[17] *See* Release at fn.82, *citing* Clearing Agency Governance and Conflicts of Interest Proposing Release, Exchange Act Release No. 34-95431 (Aug. 8, 2022), 87 FR 51812, 51836 (Aug. 23, 2022) ("service provider for critical services") *and* Regulation Systems Compliance and Integrity, Exchange Act Release No. 97143 (Mar. 15, 2023), 88 FR 23146 (Apr. 14, 2023) ("third-party providers that provide functionality, support or service, directly or indirectly, for any [SCI Systems]").

Options Clearing Corporation
125 S. Franklin Street, Suite 1200
Chicago, IL 60606
312 322 6200 | theocc.com

3. *Proposed Rule 17Ad-26(a)(3): Scenarios*

Proposed rule 17Ad-26(a)(3) would require CCAs, in their RWPs, to "identify and describe scenarios that may potentially prevent the covered clearing agency from being able to provide its critical payment, clearing, and settlement services as a going concern, including scenarios arising from uncovered credit losses, uncovered liquidity shortfalls, or general business losses." OCC supports proposed rule 17Ad-26(a)(3) as proposed, and agrees with the Commission that appropriate scenarios "will vary across different covered clearing agencies serving different markets."[18] For that reason, in response to Request for Comment 22, OCC does not believe the Commission should identify particular scenarios that a CCA should address in its RWD, but has instead provided appropriate discretion to CCAs to identify the scenarios most apposite to their unique circumstances.[19]

4. *Proposed Rule 17Ad-26(a)(4): Triggers*

Proposed rule 17Ad-26(a)(4) would require each CCA, in its RWP, to "identify and describe criteria that would trigger the implementation of the [RWPs] and the process that the covered clearing agency uses to monitor and determine whether the criteria have been met, including the governance arrangements applicable to such process." OCC supports rule 17Ad-26(a)(4) as proposed.

While in some situations (e.g. the sudden and simultaneous default of multiple clearing members), the determination whether to initiate a CCA's RWP would be straightforward, other situations that may ultimately lead to the triggering of an RWP may be slow to develop, or result from multiple contingent events. Moreover, the fact of a triggering of a recovery or (in particular) an orderly wind-down process at a CCA may create cascading impacts on clearing members, their customers, and the markets more broadly. Even where a CCA has (or has access to) sufficient resources to effect a full recovery, uncertainty and prudent risk management on the part of other market participants may lead to liquidity strains or unexpected activity. As a result, CCAs may use both quantitative and qualitative triggers for their RWPs. Qualitative triggers, such as the determination by a designated committee to initiate the RWP, provide an opportunity for the CCA to apply its expertise and judgment to nuanced issues of viability and timing. Prescribing bright line, quantitative triggers that would apply to all CCAs, irrespective of their unique structures and the features of the markets they serve and products they clear,[20] would run the risk of creating market instability by potentially forcing a CCA to initiate its RWP even when the CCA has not yet made the determination that it was necessary. For this reason, we support the Commission's determination to allow CCAs to identify appropriate triggers for their individual circumstances.

5. *Proposed Rule 17Ad-26(a)(5): Rules, Policies, Procedures, and Tools*

Proposed Rule 17Ad-26(a)(5) would require CCAs, in their RWPs, to "identify and describe the rules, policies, procedures, and any other tools or resources the covered clearing agency would rely upon in a recovery or orderly wind-down." OCC agrees that the Commission should not prescribe particular tools,[21] but instead should "[preserve] discretion for each covered clearing agency to consider the full range of available recovery tools and select those most appropriate for the circumstances of the covered clearing agency,

[18] Release at 49.
[19] The Commission and its staff remain free to provide guidance in the future should relevant risks and regulation evolve in such a manner that CCAs should incorporate additional scenarios into their RWPs.
[20] See Request for Comment 25, Release at 67 ("Proposed Rule 17ad-26 would also require that the RWP identify triggers but does not prescribe a list of specific triggers. Should the Commission prescribe any particular triggers, whether qualitative or quantitative? . . .").
[21] See Request for Comment 24, Release at 66.

Options Clearing Corporation
125 S. Franklin Street, Suite 1200
Chicago, IL 60606
312 322 6200 | theocc.com

including the products cleared and the markets served."[22] A robust dialogue between CCAs, industry participants, and international standard-setting bodies concerning resolution tools is ongoing,[23] and the Commission should avoid preempting with prescriptive rulemaking the development of consensus and common understanding that can emerge from such a dialogue.

In addition, we note that some of the information the Commission suggests CCAs should include in connection with proposed Rule 17Ad-26(a)(5) is highly speculative, and therefore of little value to the CCA or regulators. For example, the Proposal states that a CCA's RWP, in discussing the relevant procedures and tools, should include "an assessment of the associated risks from the use of each tool to non-defaulting clearing members and their customers, linked financial market infrastructures, and the financial system more broadly."[24] OCC agrees that assessing the potential impact of the use of any given tool is important, we encourage the Commission to clarify that the obligation to include this assessment for each tool only extends as far as is practicable and the CCA has a reasonable basis to anticipate such an impact, and that a CCA is not required to speculate on potential secondary, tertiary, and onward impacts *ad infinitum*.

6. *Proposed Rule 17Ad-26(a)(6): Ensuring Timely Implementation of RWP*

Proposed rule 17Ad-26(a)(6) would require CCAs, in their RWPs, to "[a]ddress how the rules, policies, procedures, and any other tools or resources identified in [proposed rule 17Ad-26(a)(5)] would ensure timely implementation of the [RWP]." OCC supports proposed rule 17Ad-26(a)(6) as proposed.

7. *Proposed Rule 17Ad-26(a)(7): Procedures for Commission Notification*

Proposed rule 17Ad-26(a)(7) would require CCAs, in their RWAs, to "[i]nclude procedures for informing the Commission as soon as practicable when the covered clearing agency is considering initiating a recovery or orderly wind-down." As a general proposition, we agree that open communication with the Commission as primary regulator is critically important for any CCA in a circumstance that could lead to the triggering of the CCA's RWP. Any CCA should plan for when and how it will communicate key information to the Commission, to ensure necessary transparency and awareness.[25] However, we are concerned that the phrase "when the [CCA] is *considering initiating* a recovery or wind-down" (emphasis added) introduces an unnecessary element of subjectivity and uncertainty. A CCA and its responsible personnel who are attempting to manage through an entity- or market-threatening event should not be exposed to potential enforcement action if their interpretation of "considering" differs from that of the Commission. This is particularly true if the CCA's RWP triggers themselves require the application of judgment; to the extent that responsible personnel are monitoring the CCA's operations and risk on a continuous basis, it can be a difficult if not impossible task to identify a moment in time that a CCA begins to "consider" initiating recovery or orderly wind-down. For this reason, we recommend that in its final form, rule 17Ad-26(a)(7) be amended as follows:

---

[22] Release at 53-4.

[23] See, e.g., Financial Stability Board, Central Counterparty Financial Resources for Recovery and Resolution (Mar. 10, 2022), *available at* https://www.fsb.org/wp-content/uploads/P090322.pdf; CPMI-IOSCO, A discussion paper on central counterparty practices to address non-default losses (Aug. 2022), *available at* https://www.iosco.org/library/pubdocs/pdf/IOSCOPD709.pdf.

[24] Release at 55-6.

[25] Given the frequent interactions and open dialogue between CCAs and the Commission, in response to Request for Comment 31, we do not believe there is any need for the Commission to prescribe a specific means of communication for a notification to the Commission under these circumstances. Any final rule should retain some flexibility to allow for a means of communication that is consistent with expectations between the CCA and Commission staff in light of their ongoing and historical communications, and also that allows for some flexibility as communications protocols evolve over time.

Options Clearing Corporation
125 S. Franklin Street, Suite 1200
Chicago, IL 60606
312 322 6200 | theocc.com

"include procedures for informing the Commission as soon as practicable when the [CCA] ~~is considering initiating~~ has determined to initiate a recovery or orderly wind-down."

8. *Proposed Rule 17Ad-26(a)(8): Testing*

Proposed rule 17Ad-26(a)(8) would require CCAs, in their RWPs, to "[i]nclude procedures for testing the covered clearing agency's ability to implement the [RWPs] at least every twelve months, including by requiring the [CCAs] participants and, when practicable, other stakeholders to participate in the testing of its plans, providing for reporting the results of the testing to the [CCA's] board of directors and senior management, and specifying the procedures for, as appropriate, amending the plans to address the results of the testing." OCC agrees with the Commission about the importance of ensuring that RWPs not just contain all the required elements, but also be workable in a potential crisis situation, and further agrees that the results of the testing should be provided to the board of directors and senior management to enable them to effectively oversee the RWP and its implementation. It is essential that CCAs, their members and customers, and regulators all have confidence that the RWP will operate as designed. Indeed, the value of periodic testing of the RWP and its elements is to reduce the burden on a CCA at a time when resources may be stretched thin, by ensuring that the CCA has a workable roadmap to address the situation at hand. We believe OCC's ongoing testing and assurance work is consistent with the Commission's policy objectives, and we urge the Commission not to add unnecessary or duplicative testing requirements in any final rule.

OCC tests the implementation of certain of its recovery and wind-down tools and related processes as an extension of its regular and periodic testing, including with mandatory participation by clearing members where such participation will contribute to the utility of the testing procedures. This testing is designed to assess and enhance the operational capacity and effectiveness of OCC in its risk management process and tools. All other RWD tools are tested on a schedule determined by OCC's Recovery and Wind Down Working Group, with the goal of ensuring regular testing of critical components of the RWP. For example, we test several of the tools in our default waterfall, as well as liquidity facility draws, and we test the processes related to clearing member default management activities, as part of our periodic default simulations. We also conduct testing with related FMIs and our settlement banks, as well as We table-top exercises to develop and test how OCC would respond to extreme scenarios that might push OCC into recovery. OCC also performs monthly analysis of each Clearing Member's Clearing Fund requirement in relation to the Clearing Member's net capital, to monitor each Clearing Members ability to fund their Clearing Fund requirement in the event of an assessment. These processes, and the review of their results, including by senior management and the Risk Committee of OCC's board of directors, enable OCC to ensure that its RWP is up to date and properly designed in light of evolving circumstances at OCC and in the market. Any resulting changes in the RWP are then approved by OCC's board of directors and filed with the SEC pursuant to Rule 19b-4 and subject to Commission approval.

Additional testing requirements, including mandatory participation by clearing members and, where practicable, the participation of other stakeholders, in all or many aspects of the testing, would require significant investment of time and resources from a CCA's most critical personnel, both to plan the testing, including coordinating with clearing members and stakeholders, and also to execute the testing (a highly manual process).[26] To the extent the Commission does impose any additional testing requirements, or believes a separate, RWP-designated test of the same processes as are already tested regularly is required, mandating that such testing on an annual basis would be duplicative of the ongoing work (described above) that CCAs do to ensure that critical components of the RWP are well understood and properly designed. Additional or

[26] In addition to the costs imposed on CCAs, we note that many entities are clearing members of more than one CCA (and may be members of other CCPs subject to similar requirements) and will therefore be required to devote their own time and resources to multiple testing exercises every year.

separate testing of the RWP would thus introduce unnecessary and potentially significant burdens without a proportionate benefit.[27]

We believe the testing described above is tailored to OCC's circumstances and appropriately designed to "help to ensure that the RWP will be effective in the event of an actual recovery or orderly wind-down."[28] We encourage the Commission to clarify its expectations as to what constitutes "testing" for purposes of proposed Rule 17Ad-26(a)(8). In so doing, the Commission should provide assurance that CCAs have the discretion to determine what type of testing is appropriate to enable the CCA to evaluate the effectiveness of its RWP [based on the current market conditions and other circumstances.

Proposed Rule 17Ad-26(a)(9): Annual Board Review of RWP

Proposed Rule 17Ad-26(a)(9) would require CCAs, in their RWPs, to "[i]nclude procedures requiring review and approval by the board of directors of the plans at least every twelve months or following material changes to the covered clearing agency's operations that would significantly affect the viability or execution of the plans, with such review informed, as appropriate by the covered clearing agency's testing of the plans." We agree with the Commission on the importance of ensuring board review of the RWP, and support matching the cadence of board review with that of the testing requirement in Proposed Rule 17Ad-26(a)(8).

IV. Conclusion

We thank the Commission for the opportunity to provide comment on the Proposed Rules. If you have any questions, please do not hesitate to contact Megan Flaherty, Head of Regulatory Law and Policy, at [redacted], or [redacted]. We would be pleased to provide the Commission with any additional information or analyses that might be useful in determining the content of the final rules.

Sincerely,

Megan Malone Cohen

Megan Malone Cohen
General Counsel and Corporate Secretary

[27] Some aspects of a CCA's RWP may not lend themselves out to full simulation-type testing in any event. For example, to the extent a CCA's RWP contemplates a potential transaction with an as-yet-unidentified third-party (e.g., a merger or acquisition), simulating such a scenario may not be feasible in any practical sense.
[28] Release at 58.