



July 17, 2023

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

Re: Covered Clearing Agency Resilience and Wind-Down Plans (File Number S7-10-23); 88 Fed. Reg. 34708 (May 30, 2023)

Dear Ms. Countryman:

Better Markets¹ appreciates the opportunity to comment on the above-captioned Proposed Rule (“Proposal” or “Release”)² to augment and reinforce the requirements governing covered clearing agencies. The Proposal is a necessary step to ensure that clearing agencies are able to perform their crucial market functions and that those functions remain viable in periods of market turmoil. The Proposal would strengthen the existing rules governing the collection of margin by covered clearing agencies with respect to intraday margin and the use of substantive inputs as part of a covered clearing agency’s risk-based margin system. The Proposal would also establish requirements for the contents of a covered clearing agency’s recovery and wind-down plan. The adoption of these rules would enable covered clearing agencies to better protect themselves, their members, and the investing public from the risks in the clearance and settlement process.

Covered clearing agencies play a crucial, if often underappreciated, role in our securities markets. They provide the services of a central counterparty (CCP). A CCP interposes itself between the counterparties to every trade, acting functionally as the buyer to every seller and the seller to every buyer. So, a CCP provides a trade guaranty with respect to transactions submitted for clearing by the CCP’s participants. In the event that a participant defaults, the CCP fulfills the obligations of the defaulting party, closes out the defaulting participant’s open positions, and uses the financial resources available to the CCP to absorb any losses. As a result, CCPs perform a critical role for the U.S. securities markets and the broader financial system by helping to reduce risk, instill confidence among market participants, and increase transparency in the markets.

In order to limit their exposure in the event of a participant’s default, covered clearing agencies collect margin from their members. Covered clearing agencies must be able to collect margin sufficient to cover their potential future exposure to each participant. The inability of a

¹ Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans’ jobs, savings, retirements, and more.

² 88 Fed. Reg. 34,708 (May 30, 2023).

covered clearing agency to collect sufficient margin, and therefore to have sufficient resources in the event of a participant's default, could have serious repercussions for the securities markets and the financial system as a whole. Although central clearing generally benefits the markets, clearing agencies can pose substantial risks to the financial system as a whole since central clearing concentrates risk in the clearing agency. As a result, disruption to a clearing agency's operations, or the failure of a clearing agency to meet its obligations, could therefore serve as a potential source of contagion, resulting in significant costs not only to the clearing agency itself or its members but also to other market participants or the broader U.S. financial system.³

For these reasons, in addition to margin requirements to prevent losses, covered clearing agencies must have a recovery and wind-down plan. These plans could be necessitated by a covered clearing agency's credit losses, liquidity shortfalls, losses from general business risk, or other losses. Recovery refers to actions taken by a financial company that has become insolvent to sustain its critical operations and services. Wind-down refers to the transferring of a financial company's critical operations and services to an alternate entity.⁴ Such plans are necessary to prevent a contagion in the event that a covered clearing agency experiences severe losses.⁵

The Proposal would amend the standards that govern a covered clearing agency's collection of margin and provide standards for a covered clearing agency's recovery and wind-down plan. Specifically, the Proposal would require that a covered clearing agency have policies and procedures to establish a risk-based margin system that includes the authority and operational capacity to monitor intraday exposure on an ongoing basis and 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. The Proposal would also require that a covered clearing agency use reliable sources for all of its substantive inputs to its risk-based margin system and have policies and procedures that would apply in the event a substantive input becomes unavailable or unreliable. The Proposal would require further that a covered clearing agency's recovery and wind-down plan include certain elements to ensure that the plan can fulfill its intended purpose and that it identifies how a covered clearing agency would operate in a recovery or achieve an orderly wind-down.

Covered clearing agencies that act as CCPs are sometimes described as part of the "plumbing" of the financial system: infrastructure that is usually taken for granted but that is crucial nonetheless.⁶ As the role of central clearing in the securities markets has grown, so too has the importance of ensuring that covered clearing agencies that act as CCPs are financially secure and able to withstand periods of stress.⁷ The Commission should adopt the Proposal to bolster the

³ *Standards for Covered Clearing Agencies*, 81 Fed. Reg. 70,786, 70,849 (Oct. 13, 2016).

⁴ Release at 34,710.

⁵ CFA Institute, Comment Letter on Standards for Covered Clearing Agencies (May 27, 2014), <https://www.sec.gov/comments/s7-03-14/s70314-20.pdf>.

⁶ Sam Schulhofer-Wohl, *Externalities in securities clearing and settlement: Should securities CCPs clear trades for everyone?*, FEDERAL RESERVE BANK OF CHICAGO (Mar. 2021), <https://www.chicagofed.org/publications/policy-discussion-papers/2021/2021-02>, at 24.

⁷ *Id.*

ability of covered clearing agencies to continue to provide their vital services and prevent disruptions to a part of the financial system that we take for granted but also can't live without.

BACKGROUND

The meme stock trading frenzy in January 2021 thrust covered clearing agencies into the spotlight. Since a covered clearing agency stands between the buyer and the seller in a securities transaction in order to manage the risk to the market if either party to the trade defaults before the transaction settles, covered clearing agencies require margin as insurance for the trades. During periods of volatility, covered clearing agencies require more margin from their members to ensure that deals are honored as the parties engaged in trading expect. Covered clearing agencies calculate the amount of margin required based on the amount of trading being carried out by each member as well as the volatility of the individual securities traded. Although margin is usually collected at the start of the trading day, covered clearing agencies may make intraday margin calls in an attempt to protect the market from sudden trade failures during periods of heightened volatility.⁸

This is what happened during the GameStop trading frenzy in January 2021. For example, on January 27, 2021, in response to market activity during the trading session, NSCC⁹ made intraday margin calls from 36 clearing members totaling \$6.9 billion, bringing the total required margin across all members to \$25.5 billion. Of the \$6.9 billion, \$2.1 billion were intraday mark-to-market calls, while the remaining \$4.8 billion was a special charge. Specifically, NSCC observed unusual volatility in certain securities, including GameStop, which presented a heightened risk to NSCC and its members. As a result, it calculated and assessed against certain affected members the remaining \$4.8 billion as an additional special charge pursuant to its established rules. NSCC imposed this charge on 18 members, all of whom provided the additional margin.¹⁰

NSCC acted pursuant to rules that govern a covered clearing agency's collection of margin. Those rules require a covered clearing agency to have policies and procedures reasonably designed to establish a risk-based margin system to cover the covered clearing agency's credit exposures to its participants if the covered clearing agency provides central counterparty services. As a minimum, a risk-based margin system must mark participant positions to market and collect margin, including variation margin or equivalent charges if relevant, at least daily and include the authority and operational capacity to make intraday margin calls in defined circumstances.¹¹

⁸ Phillip Stafford and Joe Rennison, *GameStop Curbs put clearing houses under the spotlight*, FINANCIAL TIMES (Jan. 30, 2021), <https://www.ft.com/content/29b4cc1f-a970-4cd7-b452-90d982aacfb9>. Margin includes both initial margin—a fixed, predetermined amount of collateral posted to the CCP by each party in a transaction—and variation margin—payments arising as a result of changes in the value of positions. Dietrich Domanski, Leonardo Gambacorta, & Cristina Picillo, *Central Clearing: Trends and Current Issues*, BUS. Q. REV. (Dec. 2015), https://www.bis.org/publ/qtrpdf/r_qt1512g.pdf, at 61 n.3.

⁹ NSCC—the National Securities Clearing Corporation—is the clearing agency for the U.S. equities markets.

¹⁰ Staff Report on Equity and Options Market Structure Conditions in Early 2021, at 31 (Oct. 14, 2021), <https://www.sec.gov/files/staff-report-equity-options-market-struction-conditions-early-2021.pdf>.

¹¹ Release at 34,711.

In addition, under current rules, a covered clearing agency's risk-based margin system must use reliable sources of timely price data, and it must also adopt procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable. In selecting price data sources, a covered clearing agency generally must consider the ability of the provider to provide data in a variety of market conditions, including periods of market stress.¹²

A covered clearing agency must also have a recovery and wind-down plan as part of maintaining a sound risk management framework. But, currently, covered clearing agencies are not required to include specific elements in their recovery and wind-down plans. Rather, they need only consider generally whether they can identify scenarios that may prevent them from providing their critical services; whether they have assessed the effectiveness of a full range of options for recovery or orderly wind-down and prepared appropriate plans for their recovery or orderly wind-down based on the results of that assessment; and whether they have provided relevant authorities with the information needed for purposes of recovery and resolution planning.

OVERVIEW OF THE PROPOSAL

The Commission is proposing amendments to both the standards that govern a covered clearing agency's collection of margin and the requirement that a covered clearing agency have a recovery and wind-down plan. The amendments to the standards that govern a covered clearing agency's collection of margin would require that the agency have policies and procedures reasonably designed to monitor intraday exposure and would specify the circumstances in which a covered clearing agency must have policies and procedures for collecting intraday margin. The amendments to the standards that govern a covered clearing agency's collection of margin would also require that the agency have policies and procedures reasonably designed to ensure the use of reliable sources for all substantive inputs (price data and other inputs) to its risk-based margin system and to account for the fact that those sources may become unavailable or unreliable. The amendments to the requirement that a covered clearing agency have a recovery and wind-down plan would require a covered clearing agency to include nine specific elements in its plan.

The Proposal requires a risk-based system include specific standards for intraday margin calls

First, the rule would strengthen the current requirement that a covered clearing agency have a risk-based margin system that includes the authority and operational capacity to make intraday margin calls in defined circumstances. The rule would further require that a covered clearing agency monitor intraday exposures and would provide additional specificity to the circumstances in which a covered clearing agency must have policies and procedures to collect intraday margin. Specifically, the rule would require that a covered clearing agency that acts as a CCP establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, marks participant positions to market and collects margin, including variation margin or equivalent

¹² Release at 34,711.

charges, 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.¹³

The Proposal requires reliable sources for pricing and other data used as inputs to the margin system

Second, the rule would require policies and procedures reasonably designed to have a covered clearing agency use reliable sources for both price data, as the current rule requires, and other substantive inputs to its risk-based margin system, as well as policies and procedures for when such inputs are not available or reliable.¹⁴ The rule that a covered clearing agency have policies and procedures for when the substantive inputs to its risk-based margin system may not be readily available or reliable would require that the covered clearing agency have a backup procedure that relies on substantive inputs from an alternative source or the use of an alternate risk-based margin system that does not similarly rely on the unavailable or unreliable substantive inputs.¹⁵ The Proposal uses “substantive” inputs to refer to any inputs used by the covered clearing agency that are necessary for the risk-based margin system to calculate margin.¹⁶

The Proposal requires nine elements for a recovery and wind-down plan

Third, the rule would require a covered clearing agency to include nine specific elements in its recovery and wind-down plan. The covered clearing agencies’ current recovery and wind-down plans contain or address many of the elements being proposed for inclusion, but the current plans do not contain all of the elements that would be required under the Proposal. As a result, the Commission believed it was appropriate to codify the nine elements in the Proposal to help ensure that recovery and wind-down plans continue to be effective at planning for and managing a range of recovery and orderly wind-down scenarios that could transmit systemic risk through the U.S. securities markets and the broader financial system. The Proposal identifies three specific objectives. First, the Commission believes the rule would bolster existing plans by requiring certain new elements be included. Second, for the elements that are already contained in the existing recovery and wind-down plans, the rule would codify these elements and ensure that the plans are required to continue to include these elements in their recovery and wind-down plans, and any future changes to the recovery and wind-down plans would be subject to Commission review for consistency with these requirements. Finally, the rule would ensure that the recovery and wind-down plans of any new covered clearing agencies would contain all of these elements.¹⁷

¹³ Release at 34,713.

¹⁴ Release at 34,712-34,713.

¹⁵ Release at 34,709.

¹⁶ Release at 34,715.

¹⁷ Release at 34,709, 34,717.

COMMENTS

I. The Commission should adopt the requirement that covered clearing agencies monitor their intraday exposure on an ongoing basis and have the authority to make intraday margin calls as frequently as circumstances warrant.

To ensure market stability and sustain investor confidence, covered clearing agencies must have the ability to monitor their intraday exposure on an ongoing basis and the authority to make intraday margin calls as frequently as circumstances warrant. The risk in securities transactions that arises as a result of the time between a trade's execution and settlement is especially pronounced in times of market volatility. The chances of a buyer defaulting on the obligation to deliver the cash increases if the price has fallen precipitously. The buyer might decide not to follow through with the purchase and seek to buy at the lower price. Similarly, the chances of a seller defaulting on the obligation to deliver the shares increases if the price has risen steeply. The seller might decide to hold onto the shares and seek a sale at the higher price. Covered clearing agencies mitigate this risk by guaranteeing each side of the transaction and by requiring margin to protect against the risks of these price movements.¹⁸ The Proposal will strengthen the obligation and ability of CCPs to ensure the collection of sufficient margin.

The meme stock trading frenzy discussed above highlights the integral role that covered clearing agencies play in managing risk in equity trading. As a result of that trading frenzy and the resulting price volatility, a number of clearing brokers experienced intraday margin calls from a covered clearing agency. In this way, the covered clearing agency was able to protect itself from the increased risk of a default from a member that might wish to avoid paying for a stock it bought that had plummeted or that might wish to avoid delivering a stock it sold that had skyrocketed.¹⁹

Although covered clearing agencies were able to use their ability to make intraday margin calls to protect the securities markets during that time, the episode highlighted the need to strengthen the intraday margin requirements. As the Proposal recognizes, it is not sufficient for covered clearing agencies to have policies and procedures that simply allow them to make intraday margin calls in defined circumstances. Covered clearing agencies must have policies and procedures that establish a risk-based margin system that monitors intraday exposure 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 agency are breached or when the products cleared or markets served display elevated volatility.

The requirement that covered clearing agencies monitor intraday exposure responds to the risks that may arise intraday. A CCP faces the risk that its exposure to its participants can change rapidly as a result of intraday changes in price, positions, or both, including adverse price movements, as well as participants building larger positions through new trading (and settlement

¹⁸ Sam Schulhofer-Wohl, *supra* note 6, at 2-5; Staff Report on Equity and Options Market Structure Conditions in Early 2021, *supra* note 10, at 14 n.49.

¹⁹ Staff Report on Equity and Options Market Structure Conditions in Early 2021, *supra* note 10, at 31, 43.

of maturing trades). For these reasons, a CCP must monitor and address such risks on an ongoing basis.²⁰

Real-time intraday risk monitoring has the advantage of continually capturing the activities of all clearing members. And when tolerance levels are breached, clearing agencies may issue intraday margin calls.²¹ As a result, requiring the monitoring of intraday exposure on an ongoing basis will help ensure that a covered clearing agency is sufficiently informed and situated to take appropriate actions to manage any unforeseen intraday exposure that arises.²²

The fact that a CCP's exposure may increase due to changes in the composition and/or value of participants' cleared portfolios during the day, and that these changes could increase the risk to the CCP from a participant's default, means that a CCP must have the authority and operational capacity to make intraday margin calls, both scheduled and unscheduled, to participants.²³ The requirement that covered clearing agencies have 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, provides specificity as to what constitutes the appropriate basis for a scheduled or unscheduled margin call.²⁴ Under the Proposal, covered clearing agencies would have to have policies and procedures to collect intraday margin in particular instances such as the breach of specific risk thresholds or in times of elevated volatility, while also having the flexibility to make intraday margin calls as frequently as circumstances warrant.²⁵

It is important that CCPs identify, establish, and implement clear triggers and thresholds to recalculate margin requirements on an intraday basis.²⁶ The requirement to be able to collect intraday margin when specific risk thresholds are breached ensures that the covered clearing agency considers the degree of exposure that necessitates additional margin.²⁷ The requirement to be able to collect intraday margin when there is elevated volatility ensures further that the

²⁰ Bank for International Settlements, *Resilience of central counterparties (CCPs): Further guidance on the PFMI*, at 32 (July 2017), <https://www.bis.org/cpmi/publ/d163.pdf>.

²¹ Carol Clark and John McPartland, *How Do Clearing Organizations Control the Risks of High Speed Trading?*, at 5, FEDERAL RESERVE BANK OF CHICAGO (June 2012), <https://www.chicagofed.org/publications/policy-discussion-papers/2012/pdp-2>.

²² Release at 34,713.

²³ Assessment of ASX Clearing and Settlement Facilities, Reserve Bank of Australia, at 34 (Sept. 2017), <https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/assessments/2016-2017/pdf/report-2016-2017.pdf>; Bank for International Settlements, *Principles for Financial Market Infrastructure: Disclosure Framework and Assessment Methodology*, at 33, (Dec. 2012), <https://www.bis.org/cpmi/publ/d106.pdf>.

²⁴ Release at 34,714.

²⁵ Release at 34,714.

²⁶ Bank for International Settlements, *supra* note 20, at 32.

²⁷ Release at 34,714.

covered clearing agency develops policies and procedures to determine when it considers volatility to be elevated above typical levels and potentially necessitating additional margin.²⁸

These requirements also respond to the need for CCPs to provide full transparency for triggers of intraday margin calls.²⁹ Clear standards for when intraday margin may be necessary assists clearing participants in actively tracking and monitoring liquidity demands.³⁰ To this end, the Proposal recognizes that the requirement to specify thresholds that would trigger intraday margin calls, if breached, could improve participants' ability to understand when they may be subject to additional margin calls and, therefore, to be able to prepare accordingly to provide additional financial resources in anticipation of additional margin calls.³¹

The regular collection of margin prevents insufficiently collateralized current exposures from accumulating. For this reason, CCPs must perform intraday margin calculations for regular or ad hoc margin calls. This allows CCPs to respond to the erosion of margin held in relation to the observed changes in intraday credit exposures to its participants' portfolios.³² The Proposal will help ensure that CCPs carry out these responsibilities and have the authority to do so.

II. The Commission should adopt the requirement that covered clearing agencies use reliable sources for all substantive inputs to its risk-based margin system and that they have specific procedures for when such inputs are not available or reliable.

The importance of a covered clearing agency's risk-based margin system means that all of the substantive inputs to that system, and not just price data, must be based on reliable sources. These inputs include portfolio size, volatility, sensitivity to various risk factors that are likely to influence security prices, duration, and convexity.³³ When the Commission required that covered clearing agencies use reliable sources of price data, it did so because covered clearing agencies need their margin systems to operate with a high degree of accuracy and reliability, given the risks that their size, operation, and importance pose to the securities markets.³⁴ The Commission considered reliable sources to be those that provide accurate, complete, and timely data; that had the capability to provide broad data sets to the covered clearing agency; and that required limited

²⁸ Release at 34,714.

²⁹ *Recommendations Regarding CCP Margin Methodologies: Report of the Central Counterparty (CCP) Risk and Governance Subcommittee, Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission* (Feb. 23, 2021), https://www.cftc.gov/media/5706/MRAC_CRGSubcommittee-DiscussionPaperOnBestPracticesinCCPMarginMethodologies022321/download.

³⁰ *Id.*

³¹ Release at 34,714.

³² Bank for International Settlements, *supra* note 20, at 32.

³³ Release at 34,714. Duration describes the responsiveness of a bond's price to a change in interest rates. A high duration indicates high price sensitivity to a change in interest rates, while a low duration indicates low price sensitivity to a change in interest rates. Convexity measures the sensitivity of a security's duration to a change in interest rates. A security with "negative convexity" will experience a decrease in duration as interest rates decline, and an increase in duration as interest rates increase. *Piper Cap. Mgmt.*, Exchange Act Release No. 48409, 2003 WL 22016298, at *4 (Aug. 26, 2003).

³⁴ *Standards for Covered Clearing Agencies*, 79 Fed. Reg. 29,508, 29529 (May 22, 2014).

manual intervention by the covered clearing agency.³⁵ Covered clearing agencies should use reliable sources for *all substantive inputs* to its risk-based margin system for these same reasons.

With respect to both price data and other substantive inputs, moreover, covered clearing agencies may have to rely on third-party providers and therefore must anticipate that these providers may become unavailable or unreliable. When the Commission required that covered clearing agencies use reliable sources of price data, it recognized that in some situations price data might not be available or reliable and that having procedures for those situations would be valuable.³⁶ But the unavailability or unreliability of any substantive input to a covered clearing agency's risk-based margin system, if a third party provider does not perform, could potentially affect the covered clearing agency's ability to calculate margin.³⁷ As a result, covered clearing agencies should have procedures for situations where any such inputs are not available or reliable. The Proposal's requirement that covered clearing agencies develop appropriate procedures for when substantive inputs provided by third party providers are unavailable or unreliable should help ensure that the covered clearing agency can continue to calculate and collect margin.³⁸

The Commission should also adopt the Proposal's determination to specify certain requirements for the procedures that covered clearing agencies must establish in the case of the unavailability or unreliability of all substantive inputs. The Proposal provides that the procedures applicable when price data or other substantive inputs are not readily available or reliable shall include the use of price data or substantive inputs from an alternate source or the use of an alternate risk-based margin system that does not rely on the same unavailable or unreliable substantive input. This part of the Proposal ensures that the backup procedures available to a covered clearing agency in the event of the unavailability or unreliability of a substantive input to its risk-based margin system are sufficiently distinct from the impaired data source that they will serve as reliable alternatives.

III. The Commission should require that covered clearing agencies have recovery and wind-down plans that include the nine elements specified in the Proposal.

The Commission should require that the recovery and wind-down plans of covered clearing agencies include the nine elements specified in the Proposal. As the Commission recognizes, requiring that the recovery and wind-down plans of covered clearing agencies include certain specific elements is likely to reduce the risk of unsuccessful recoveries, disorderly wind-downs, and negative spillovers to other clearing agencies and other markets. Some of the elements would make a recovery and wind-down plan more effective in guiding the covered clearing agencies during times of recovery or wind-down. Others would help participants and regulators better understand how the covered clearing agencies will prepare for and respond to stress. In this way,

³⁵ *Standards for Covered Clearing Agencies*, 79 Fed. Reg. at 29529.

³⁶ *Standards for Covered Clearing Agencies*, 79 Fed. Reg. at 29529.

³⁷ Release at 34,714.

³⁸ Release at 34,714.

the incorporation of these elements into recovery and wind-down plans will make covered clearing agencies, participants, and regulators more aware of, and better able to respond to, potential risks.³⁹

The need for covered clearing agencies, participants, and regulators to be able to guard against the risks covered clearing agencies face is crucial in light of the role such agencies play in the securities markets. That role has increased in importance since the 2008 financial crisis. Since that time, more and more connections in the global financial system run through CCPs. This growing interconnectedness has benefits but also poses risks. The inability of a CCP to recover from severe losses, or the disorderly wind-down of a CCP, could have significant repercussions not only for the sector in which the CCP operates but for the markets and the economy as a whole.⁴⁰

This is why a detailed recovery and wind-down plan is essential. If periods of stress in the markets cause shocks that result in losses to the CCP that exceed its resources, a CCP could fail and be forced into resolution. Such a failure could have system-wide effects: clearing participants might find it difficult to manage positions if a CCP fails, and all clearing participants would have to find alternative ways of closing trades, at a time when there might be heightened uncertainty about the value of the underlying exposures and the associated market and counterparty risk.⁴¹

As a result, because even sound risk management may not prevent a CCP's default in extreme circumstances, CCPs must have comprehensive recovery and wind-down plans.⁴² The obvious strength of recovery and wind-down planning is the ex-ante development of a strategy to maintain the critical operations of the CCP as a going concern, even in the face of losses that would otherwise have caused its insolvency, or to ensure the orderly transfer of functions. Recovery planning allows the CCP to prepare risk management and contingency measures so it can manage extreme circumstances that could otherwise threaten its viability. Wind-down planning allows a CCP to prepare for a situation where it is not viable for it to continue critical operations and must transfer those operations to a different entity. A recovery and wind-down plan, if appropriately implemented by the CCPs and their regulators, therefore lowers the probability of a contagion from a CCP's default and better ensures the continuity of critical operations. So robust recovery and wind-down plans are essential to managing the "too important to fail" nature of CCPs.⁴³

The Proposal not only ensures that covered clearing agencies have recovery and wind-down plans that are sufficiently robust, but it also promotes greater uniformity among recovery and wind-down plans. The fact that CCPs are not currently subject to uniform requirements for their recovery and wind-down plans introduces risk.⁴⁴ The Proposal mitigates that risk by requiring that all recovery and wind-down plans incorporate at least nine specific elements.

³⁹ Release at 34,732-34,733.

⁴⁰ Domanski, *supra* note 8, at 59.

⁴¹ Domanski, *supra* note 8, at 68.

⁴² Domanski, *supra* note 8, at 71.

⁴³ Froukelien Wendt, *Central Counterparties: Addressing their Too Important to Fail Nature* (working paper Jan. 2015), <https://ssrn.com/abstract=2568596>, at 15, 17.

⁴⁴ Glenn Hubbard et al., *Report of the Task Force on Financial Stability*, BROOKINGS INST. (June 2021), https://www.brookings.edu/wp-content/uploads/2021/06/financial-stability_report.pdf, at 96.

CONCLUSION

We hope these comments are helpful as the Commission finalizes the Proposal.

Sincerely,



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