

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

Submitted via electronic filing

October 18, 2022

Re: File Number S7-21-22 on Clearing Agency Governance and Conflicts of Interest

Dear Sir or Madam,

Barclays, BlackRock, Inc., Citigroup Inc., Goldman Sachs Group, Inc., JPMorgan Chase & Co., Societe Generale, T. Rowe Price, UBS AG, and The Vanguard Group, appreciate the opportunity to submit comments on the Securities and Exchange Commission (“Commission”) proposal on “Clearing Agency Governance and Conflicts of Interest” (the “Proposal”).

We value the Commission’s efforts to enhance the regulatory requirements related to the governance of registered clearing agencies and welcome the proposed rules.

Our white paper (“White Paper”), which we first published in October 2019 and has 20 signatories representing both buy-side and sell-side firms, discussed the need for *“Enhancing governance practices to obtain and address input from a broader array of market participants on relevant risk issues”* as one of its 20 recommendations.¹

The purpose of these recommendations is to enhance financial stability by protecting the safety and soundness of CCPs through enhanced risk management standards and aligning incentives through requirements for meaningful CCP capital for covering both default and non-default losses. Effective risk governance is a critical component in this regard as it ensures that those who bear potential losses, including clearing members and market participants, have sufficient visibility into CCP risk management frameworks to fully understand the risks to which they are exposed and have a meaningful voice with regard to how such risks are managed. It is encouraging that the intent of our recommendations align with the objectives of the Commission’s Proposal, which rightly notes that the governance framework of a clearing agency is integral to ensuring that the clearing agency is resilient and strong.

We therefore commend the Commission for reviewing its requirements related to clearing agency governance arrangements and proposing detailed rules on this topic. In particular, we support the following proposed requirements:

- **Establishment of a risk management committee (“RMC”):** We support the Commission’s proposal under Rule 17Ad-25(d)(1) to institute an RMC that would include representatives from owners and participants (the latter of which we interpret to mean both clearing members and end-users) of the registered clearing agency as this would ensure

¹ A Path Forward for CCP Resilience, Recovery and Resolution available at: <https://www.jpmorgan.com/solutions/cib/markets/a-path-forward-for-ccp-resilience-recovery-and-resolution>

that those who bear the risk through loss mutualization have an ability to provide feedback on potential changes at the CCP. We also welcome the fact that Proposed Rule 17Ad-25(d)(1) requires the RMC to include multiple representatives from the owners and participants of the registered clearing agency as a mechanism to ensure perspectives of both small and large participants are represented. Both these requirements are consistent with our recommendation that governance arrangements should “*capture input from both clearing members and end users*”.

While it is reassuring that all seven of the current clearing agencies include participant representatives on their RMCs, we believe that the codification of this practice into a requirement will be beneficial, as it will ensure that registered clearing agencies will be obligated to meet what is currently akin to a “best practice.”

- **Provision of independent opinion:** We support the proposed Rule 17Ad-25(d)(2), which would require that the RMC provide a risk-based independent opinion to the Board. We believe that diverse perspectives from owners and participants would enhance the effectiveness of the risk management practices. However, we are concerned that requiring the RMC to consider the safety and efficacy of the clearing agency could result in conflicts whereby Committee members would be precluded from representing their employers. This was one of the challenges that we noted in the White Paper.

One approach to addressing this conflict would be to require RMC members to also consider the safety and efficiency of the broader financial markets, rather than solely the registered clearing agency.

- **Obligation to formally consider stakeholder viewpoints:** We welcome Proposed Rule 17Ad-25(j), which would require each registered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to solicit and consider views of participants regarding material developments in its operations on a recurring basis.

While the proposal recognizes that the majority of registered clearing agencies already have mechanisms to seek input from participants, we nevertheless recommend requiring the establishment of risk working groups as a forum to seek risk-based input from a broad array of market participants as part of the Commission’s rules. This would ensure that “*all market participants can freely represent the views of their firms and other similarly situated market participants*”. In addition, it would ensure that registered clearing agencies, including those established and registered in the future, are compliant with the best practice of maintaining a forum where participants (both clearing members and end-users) can represent their own firms while expressing views.

- **Establishment of a feedback loop:** We appreciate Proposed Rule 17Ad-25(j), which would require registered clearing agencies to document their consideration of participant viewpoints and ensure that a record exists that the clearing agency received such viewpoints and evaluated their merits. As the proposal rightly observes, such a requirement would help promote confidence in the use of participant forums, promote an open dialogue and greater understanding between the clearing agencies and participants and also help the Commission evaluate the ways in which clearing agencies consider stakeholder viewpoints and balance potentially competing viewpoints. This is also consistent with one of our recommendations to “*obtain and address clearing member and end user feedback and for such feedback to be disclosed to regulators*”.

- **Requirement for Board to balance role as critical service provider:** We also support Proposed Rule 17Ad-22(e)(2), which would require governance arrangements to “support the public interest requirements... and the objectives of owners and participants” as this aligns with our position that CCPs should adopt governance arrangements that ensure that the CCP’s board of directors makes decisions that balance the CCP’s role as a provider of critical market infrastructure with its obligations to shareholders.

In addition, we request that the Commission consider rulemaking on three further governance-related areas.

- **Requiring market consultation prior to certain rule filings with the Commission:** Although not specifically contemplated in the Proposal, we believe that the Commission should require registered clearing agencies to formally consult market participants prior to any rule filing with the Commission that would materially impact the risk profile of the CCP and the CCP should summarize the feedback from these market participants in its rule submissions to the SEC.² This would require the clearing agencies to “*obtain explicit approval from clearing members before making any rule or methodology changes or introducing novel or complex products that materially affect the risk profile of the CCP*” and ensure feedback is received sufficiently early in the process to allow them to make iterations before submitting any rule filing with the regulators. It is worth noting that this recommendation is in line with the practices in some of the other major jurisdictions.³
- **Allowing RMC members to obtain feedback from experts:** We believe that the proposed rules should include explicit provisions that allow RMC members to obtain feedback from experts within their member firms which will enhance the quality of input the registered clearing agencies receive from RMC members.
- **Apply rigorous governance arrangements to use of emergency powers:** Many CCP rulebooks provide the CCP with broad and vaguely defined emergency powers. These open-ended provisions can exacerbate uncertainty for clearing participants in times of extreme volatility or market stress. As recommended in our White Paper, “*emergency powers should be reserved for extreme circumstances*”, and “*their use should be subject to rigorous governance arrangements and consultation with primary regulators*”.

The Proposal raises a number of important topics related to CCP Governance, many of which were also identified in our White Paper. We share the perspective of the Commission that effective governance is the cornerstone to ensuring a well-functioning and resilient clearing agency that can withstand periods of market stress.

Nevertheless, we urge the Commission to consider governance a building block and a starting point. There are additional issues we believe regulators should address including enhanced public

² Given the typically short comment periods related to such rule filings, we believe this type of transparency may facilitate other stakeholders’ ability to identify and comment on issues related to the potential rule.

³ Article 5 (2) of [Commission Delegated Regulation \(EU\) No 153/2013 of 19 December 2012](#)

disclosures by CCPs and ensuring robust and stable initial margin and the alignment of incentives through appropriately sized CCP capital.

We appreciate the opportunity to provide our input and look forward to ongoing engagement with the Commission and other market stakeholders to strengthen the overall system. If we may provide further information or answer any specific questions, please do not hesitate to contact us.

Sincerely,

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