sifma
asset management group

September 13, 2019

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street, NW
Washington, DC 20581

Submitted via electronic filing: https://comments.cftc.gov

Re: Derivatives Clearing Organization General Provisions and Core Principles (Proposed Amendments – RIN 3038-AE66)

Dear Mr. Kirkpatrick:

The Securities Industry and Financial Markets Association's Asset Management Group ("**SIFMA AMG**", or "**AMG**")[1] appreciates the opportunity to provide comments to the Commodity Futures Trading Commission ("**CFTC**", or the "**Commission**") on the proposed amendments to the Derivatives Clearing Organization ("**DCO**") General Provisions and Core Principles (the "**Proposed Rules**"). SIFMA AMG's members appreciate the Commission engaging in its Project KISS initiative and for addressing certain risk management and reporting obligations for DCOs. Our members are specifically supportive of Commission action to increase customer[2] participation in DCO governance, and to enhance the integrity and availability of DCO's required public disclosures. We believe that many of the Commission's changes in the Proposed Rules are helpful to customers of DCOs in evaluating their risks to the DCO. We believe there are additional areas where the Commission's Proposed Rules could offer additional information and involvement of customers and request that the Commission consider further changes to Part 39 as outlined below.

I. Customer Participation in DCO Governance & DCO Consideration of Market Feedback– Proposed §39.24, §39.25 and §39.26

AMG members are supportive of the Commission's proposed expansion of §39.32 to all DCOs by removing § 39.32 and adopting new §§ 39.24, 39.25, and 39.26 as the governance requirements of § 39.32 are appropriate for all DCOs. We also appreciate the Commission adopting a definition of "market participant" in § 39.26. We request the Commission explicitly require customer participation on the Board of Directors and Advisory Committees ("**Governing Bodies**") as required by DCO Core Principle Q in the Commodity Exchange Act (the "**Act**").[3] Specifically, we believe that customer participation in DCO Governing Bodies is required by the Act through its use of the term "market participants" and encourage the Commission to revise Regulation §39.32 accordingly. As drafted, Regulation 39.26 could permit DCOs to choose only persons associated with clearing members within their Governing Bodies. Had Congress intended for only

[1] SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceed $45 trillion. The customers of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

[2] The term "customer" is used to refer to buy-side market participants (including asset managers) that access DCOs through clearing members, and thus, are indirect participants in the DCO. Moreover, any reference throughout this letter to "market participant" or "market feedback" shall refer to the Commission's proposed definition of "market participant" which includes " any clearing member of the DCO or customer of such clearing member, or an employee, officer, or director of such an entity." *See* the Proposal at 22244.

[3] 7 USC §7a-1(c)(2)(O).

clearing members to be on DCO governing boards they would have stated so specifically. Rather Congress chose to use the term "market participants" which, as the Commission correctly defines, include clearing members and customers. Accordingly, we request that § 39.26 be amended to require both clearing members and customers.

(a) DCO Governing Bodies

With the shift to clearing following the financial crisis, customers have become large users of DCO services. Despite this increased participation, customer representation on Governing Bodies is limited or non-existent, and, concerningly, DCO outreach feedback on major DCO governance decisions is similarly limited or non-existent. As large users of DCO services, customers share the same risks as clearing members, and in time of crisis may be subject to loss allocation tools that utilize customer funds. The Commission has acknowledged in the Proposed Rules that, "[customers] clearing trades through a futures commission merchant ("**FCM**") in a particular market are exposed to the risks of that market, just as clearing members are, and therefore have similar interests in the decisions that govern the operations of the DCO."[4] Further, many DCO loss allocation plans include the disgorgement of customer funds through Variation Margin Gains Haircutting ("**VMGH**") in their rulebooks, which can eliminate some or even all customer gains in a catastrophic default event. Although AMG has continuously expressed its belief that customer funds should not be used as recovery tools for CCPs through measures such as, but not limited to, VMGH and tear-up of contracts[5], if customers are to be subjected to these extraordinary measures, DCO Governing Bodies should be required to solicit customers' views in for decision making.

Governing Bodies of DCOs would benefit from the expertise of customers in certain markets. Historically, DCOs populated their Governing Bodies with persons affiliated with their clearing members either because the DCO was owned by its clearing members under a mutualized structure or because expertise resided with individuals employed by clearing members or their affiliates. While FCMs remain expert in most products they clear, post-Dodd Frank, a significant amount of expertise has shifted to buy-side institutions in particular due to the Volker rule's restrictions on proprietary trading,[6] to which many FCMs are now subject as a result of being a part of banking organizations. Accordingly, where the expertise has moved the buy-side it would be intuitive to require their inclusion in the relevant Governing Boards. As the Commission rightfully notes, this expertise creates a "unique perspective that [will] complement that of the other decision makers on the governing board."[7] In fact, according to CCP quantitative disclosures, for many of the products cleared by the most prominent CCPs, customers account for a significant majority of the market depth as evidence by the margins posted by customers relative to the margin posted by clearing members to the CCPs.[8] Given customer market experience, we believe customer participation in Governing

[4] Proposal at 22244.

[5] *See* SIFMA AMG's Response to (1) Consultative Report of the Committee on Payments and Market Infrastructures and Board of International Organization of Securities Commissions re: Resilience and recovery of central counterparties: Future guidance on the PFMI dated August 2016; (2) Discussion Note of the Financial Stability Board re Essential Aspects of CCP Resolution Planning dated 16 August 2017, available at https://www.sifma.org/wp-content/uploads/2017/05/sifma-amg-submits-comments-to-cpmi-and-iosco-on-the-consultative-report-and-fsb-discussion-note-regarding-ccp-resiliency-recovery-and-resolution.pdf. (*Stating*, "… CPMI, IOSCO and the FSB should prohibit use of "Variation Margin Gains Haircutting" or "VMGH" at any point prior to resolution. The mutualization of loss through taking non-defaulting customer property is an extraordinary measure that should only be deployed in resolution as a tool of last resort after equity holders have been incentivized to recapitalize and the resolution authority has taken over control from the failing CCP's management.")

[6] Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 619.

[7] Proposal at 22244.

[8] *See* CME Group Quantitative Disclosure Q1 2019, available at, https://www.cmegroup.com/clearing/cpmiiosco-reporting.html; Eurex Quantitative Disclosure Q1 2019, available at, https://www.eurexclearing.com/clearingen/about-us/compliance-standards; ICE Clear EU Quantitative Disclosure Q1 2019, available at, https://www.theice.com/clear-europe/regulation ICE Clear US Quantitative Disclosure Q1 2019, available at,

Bodies would serve to strengthen DCO risk management and the Proposed Rules provide welcome strides to ensure this.

(b) Establishment of DCO Advisory Committees

AMG members believe a governance structure that allows for meaningful customer participation is critical to proper DCO function and Commission oversight. The current regulatory process contains structural obstacles that limit the Commission's receipt of all relevant information when evaluating new rules, rule amendments and new products filed by DCOs. Specifically, rule submission processes in Parts 39 and 40 do not required DCOs to obtain views from market participants as a prerequisite to the rule filing.[9] While certain rule filing regulations, such as §40.5 and §40.6, require the DCOs to provide the Commission with any "substantive opposing views" relating to the filing, the DCOs are not required to solicit any such views and therefore frequently certify to the Commission that no opposing views were received. As a result, the Commission is not always receiving a comprehensive package of information in order for it to properly review the related submission, the omission being market participant feedback on any submitted rule, rule change or new product. We believe that DCOs should provide the Commission with a summary of market feedback in DCO submissions.

The lack of information being submitted to the Commission highlights that what is missing from DCO governance is a required mechanism for DCOs to obtain market feedback. We request that the Commission specifically require DCOs to obtain market feedback prior to filing any proposed rule, rule change, new product and product change. We suggest that the most efficient mechanism to obtain this feedback is through consultation of an advisory committee comprised of market participants, including customers, who could provide any support or opposition to the relevant proposal. We request that the Commission require DCOs to create these advisory committees should be chartered with a view of obtaining feedback of the relevant firms on proposed rules, rule changes, new products and product changes, and where those individuals serving on the advisory committees are serving as representatives of their respective employers and can share those views. We want to specifically contrast these advisory committees from the DCO risk committees. While the risk committees are comprised of individuals from market participants, these individuals are typically subject to duties of loyalty to the DCOs and individual confidentiality arrangements, thus stunting their ability to provide their firm's feedback on the proposal. We believe the risk committees serve an important risk management oversight function and should continue to do so. However, the risk committees are not the correct body to obtain market feedback due to the individual limitations noted above. We further believe that the establishment of theses advisory committees will ensure DCOs are receiving market participant views prior to any rule or product finalization and will be able to better provide the Commission with market feedback in each new rule, rule amendment or new product submission.

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https://www.theice.com/clear-us/regulation; LCH LTD Quantitative Disclosure Q1 2019, available at, https://www.lch.com/resources/rules-and-regulations/ccp-disclosures. Section 6.1 of the CPMI-IOSCO Quantitative Disclosure for Q1 2019 indicate that – CME Group's customers accounted for 86% of IRS margin; Eurex AG'S customers accounted for 64% of total margin; ICE Clear EU's customers account for 82% of F&O margin; ICE Clear US's customers accounted for 60% of F&O margin; and LCH Ltd.'s customers accounted for 54% of SwapClear margin

[9] *See generally* 17 CFR §§ 40.2 and 40.3 (which do not explicitly require DCOs to obtain substantive opposing views for listing products for trading by certification or voluntary submission of new products for Commission review and approval.) *See also* 17 CFR §40.5(a)(8) (which requires registered entities, including DCOs, filing a voluntary submission of rules for Commission review and approval to "Provide a brief explanation of any substantive opposing views ***expressed to the registered entity*** by . . . market participants that were not incorporated into the rule, or a statement that no such opposing views were expressed", and 17 CFR §40.6(a)(7)(vi) which requires registered entities filing a self-certification of rules to provide "a brief explanation of any substantive opposing views ***expressed to the registered entity*** by… market participants, that were not incorporated into the rule, or a statement that no such opposing views were expressed[.]")

(c) Summary of Market Views in DCO Submissions

Further, DCOs should provide a summary of the feedback it receives from the advisory committee and other market participants and include both supporting as well as opposing views. DCOs should include in their submissions a certification that they solicited market feedback and that the summary provided includes all material views, supportive and opposing. The summary should also delineate whether the views were received from members or customers.

Accordingly, we request the Commission require DCOs to include customers within their Governing Bodies as well as the establishment of advisory committees chartered to obtain market feedback for proposed rules, rule changes, new products and product changes.

II. New Products Accepted for Clearing - §39.19(c)(4)(xxvi)

Given their market experience and shared risks, we request that the Commission require DCOs to seek greater participation from clearing members and customers prior to accepting new products for clearing. Proposed §39.19(c)(4)(xxvi) would require DCOs accepting a new product for clearing to provide notice to the Commission no later than 30 days prior to launching the new product.[10] Proposed § 39.19(c)(4)(xxvi)(D) would require a DCO to provide "a statement as to whether the [DCO] has informed, or intends to inform, its clearing members and/or the general public of the new product and, if written notice was given, a web address for a copy of such notice. Proposed rule 39.19(c)(4)(xxvi)(E) would require DCOs, that choose to conduct outreach under §39.19(c)(4)(xxvi)(D), to provide "[a]n explanation of any substantive opposing views received and how the [DCO] addressed such views or objections." As mentioned with respect to Governing Bodies in Section I, in terms of new products, a DCO is only required to notify the Commission of any substantive opposing views obtained during market outreach, however, it does not require the DCO to conduct any outreach to market participants. Failure to require market outreach, may ultimately prevent customer participation. SIFMA AMG have previously expressed concern about the lack of a requirement for DCOs (and DCMs, which are not subject to this rulemaking) to solicit market participant input prior to accepting new products.[11] Without such a requirement, DCOs would not provide an opportunity for market participants to provide any input, thereby de-valuing the information provided to the Commission.

Given the critical (and for many DCOs, systemic) services provided by DCOs and the various risk shares that clearing members and customers are exposed by clearing at the DCOs, we believe it is imperative that DCOs be required to solicit input from clearing members and customers prior to the acceptance of new products for clearing. We believe DCOs have a responsibility to inform the Commission of market feedback prior to accepting new products. This can only properly occur with actual feedback from the market, and sufficient time to provide such feedback. As mentioned in Section I, DCOs should not be able to respond that they have not received any opposing views as a result of their failure to solicit them in the first instance.

Currently, Commission regulation §40.2 requires that the DCO submit a certification for new products to the Commission only one business day prior to listing. While the Commission should always strive to encourage innovation, and the current regime was structured to be quick and efficient, it cannot achieve the latter without an avenue for customer feedback, as demonstrated by the recent launching of bitcoin futures. Upon the launch of bitcoin futures market participants expressed the view that while such expedited new

[10] *Id.*

[11] *See* SIFMA AMG's Letter to the CFTC on Part 40, *available at* https://www.sifma.org/wp-content/uploads/2017/12/SIFMA-AMG-Comments-on-the-CFTC%E2%80%99s-Rule-Certification-and-Review-Process-for-Registered-Entities.pdf, (AMG argued that "while our recommendations in this letter address the certification process for rules and rule amendments that are material, as opposed to initial product listings, similar concerns about the lack of opportunity for public input and consideration that were expressed for new product listings also arise in the rule and rule amendment context.")

product certifications may be appropriate for standardized products, it is not appropriate for novel products, which may have benefited from a more considered process involving robust public comment on significant issues including margin levels, trading limits, stress testing, and the guarantee fund.[12] To provide such time, AMG recommends the Commission amend Part 40 to require DCOs to submit information on proposed new products at least 30 days prior to certification.

Should the Commission choose not to require customer input, AMG members believe that at the very least the notice provided under §39.19(c)(4)(xxvi) should be made available to the public. This would provide customers with a minimal opportunity to evaluate the potential risks to the DCO associated with it accepting new products for clearing.

The Commission requested comment on whether defining the term "product" for purposes of §40.2 or §40.3 would be helpful in clarifying what products must be reported to the Commission under proposed new §39.19(c)(4)(xxvi) as well as how the term should be defined. AMG believes that a definition would be useful and think that the Commission should conduct a study or establish an industry roundtable with DCOs, FCMs and customers to assists with defining which products should be reported under proposed new §39.19(c)(4)(xxvi).

III. DCO Risk Management – Back-Tests §39.13(g)(7)

AMG agrees with the Commission that clarification when conducting back-testing is necessary. The Commission is proposing new §39.13(g)(7)(iii) to clarify that, in conducting back tests of initial margin requirements, a DCO should compare portfolio losses only to those components of initial margin that capture changes in market risk factors.[13] This has raised a few questions among AMG members. For example, we believe that margin add-ons, which are *outside* of the model framework, should not be included when back-testing the relevant margin model. Excluding the impact of these and other similar add-ons will reduce the likelihood of misrepresenting the actual margin coverage produced by the DCOs' models, as their inclusion may result in margin breaches going undetected. In addition, margin add-ons are often calculated at the sole discretion of the DCO and are not readily replicable by market participants. Accordingly, any back testing that is made available to market participants and includes these adjustments, currently provides limited information to market participants.

Moreover, AMG members believe CCPs should disclose these back-testing results at the contract level. This would result in a much higher level of transparency and facilitate enhanced risk monitoring by all market participants. Currently, back-testing is only conducted at an account level (house account or customer account) and is disclosed only at the clearing service level via the CCP's PFMI quantitative disclosures. As discussed below in Section IV, this information is a critical part of evaluating the creditworthiness of CCPs.

IV. Public Disclosure & Publication of Information - §39.21; Additional Disclosures - §39.37

An important element of CCP resiliency relies on enhanced sharing of accurate information across CCPs, clearing members, and customers. SIFMA AMG commends the Commission for previously adopting the requirement for systemically important DCOs and subpart C DCOs to provide the Disclosure Framework for Financial Market Infrastructures and quantitative disclosure in Regulation 39.37. As customers generally choose where their trades should clear, we believe it is essential to enhance DCO disclosures to customers and that customers should have the same access to information as clearing members. Currently, customers are reliant almost solely on the information which DCOs choose to make publicly available.

[12] *See* Letter from Walt Lukken, CEO, FIA, to J. Christopher Giancarlo, Chairman CFTC (dated December 6, 2017).
[13] Proposal at 22235.

As fiduciaries, AMG members are required to conduct regular reviews of the creditworthiness of their customers' trading counterparties, including DCOs. Clear, accurate, comparable, and consistent disclosures are critical for AMG members to conduct thorough credit reviews on DCOs. Such information facilitates market confidence by enabling participants to make independent evaluations on their DCO counterparties. Currently, the sources for this information are the CPMI IOSCO PFMI Self-Assessments, which are released biennially plus any interim material changes, and the CPMI IOSCO Quantitative Disclosures, which are released quarterly (together, the "IOSCO Disclosures").

To date, AMG members have had difficulty locating the IOSCO Disclosures, have observed a lack of sufficient standardization, and have noted reporting errors in some. Regulation 39.37(a) and (b) require a SIDCO or a subpart C DCO to publicly disclose responses to the CPMI-IOSCO Disclosure Framework and to review and update them at least every two years and following material changes to the SIDCO's or subpart C DCO's system or environment in which it operates.[14] Regulation 39.37(b)(2) requires that a copy of the changes (aka a redline) of the additions and deletions be made available to the Commission. We agree that a redline is extremely useful in understanding the evolution of the disclosures and request the Commission require DCO's to publish the redlines on its website concurrently with the revised disclosure. As these disclosures are quite lengthy, a redline will enable efficient review of changes to the disclosures. The Commission is proposing to amend §39.37(b) to require that these DCOs provide notice to the Commission of any such updates to its responses following material changes to its system or environment no later than 10 business days after the updates are made. As a technical comment to 39.37(b)(2), we believe that any changes to the disclosure framework should be provided to the CFTC promptly following its publication not just those due to material change. Accordingly, we recommend the following drafting changes to proposed §39.37(b)(2):

> "Provide notice to the Commission and post on its website any ~~of~~ updates to its responses required by paragraph (b)(1) of this section ~~following material changes~~ no later than ten business days after such ~~the~~ updates are made. Such notice and website posting shall concurrently be accompanied by a copy of the text of the responses that shows all deletions and additions made to the immediately preceding version of the responses;"

Although helpful, a change to proposed §39.37(b)(2) is only a step towards facilitating effective disclosures. To further increase transparency, we recommend that the Commission require a consistent format for the IOSCO Disclosures, provide a deadline for publishing the disclosures, and subject them to audit requirements. The lack of consistency among disclosures has created challenges in properly diligencing DCOs. Unlike the financial data provided by FCMs on the CFTC's website, which is consistent and compiled in one place (provided via PDF and excel),[15] the IOSCO Disclosures are published separately, on each DCO's website with formatting determined by the DCO. AMG members have found value in the single, consistent format published by the Commission, and would encourage the Commission to require the same for the data provided in the IOSCO Disclosures. By requiring a single format and creating a new deadline for publishing the IOSCO Disclosures (i.e. within 30 days after quarter end), the Commission would enhance disclosure standards and the review of information while removing the heavy burden on customers that currently need to compare vastly different reports.

Further, as errors may often appear in both Qualitative and Quantitative disclosures, audits are necessary to review for material omissions and ensure accuracy, which is critical to the evaluation process. Audits will serve to address several issues with the current disclosures, ranging from divergent interpretations of required disclosure, data entry errors, and formatting inconsistencies.[16]

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[14] Proposal at 22246

[15] *See* Financial Data for FCMs (Form 1-FR), available at https://www.cftc.gov/MarketReports/financialfcmdata/index.htm

[16] We note the CFTC's recently issued orders against the Options Clearing Corporation ("OCC") and the Korea Exchange, Inc..

In addition, to the IOSCO Disclosures, AMG believes that DCOs should be required to make publicly available their quarterly and annual reports, both qualitative and quantitative, required under §39.11(f) concurrently with being provided to the Commission. DCO financial statements are critical for any risk assessment of a DCO, in particular, the financial statements and any accompanying footnotes, including the balance sheet, income statement, and statement of cash flows. These should be prepared in accordance with U.S. generally accepted accounting principles. The financial health of a DCO cannot be fully determined using only the information provided in the quantitative disclosures.

Any counterparty diligence begins with a review of the entity's financial statements. Of note, Quantitative disclosures #15.1 through #15.3 require high level financial information. However, these disclosures are not sufficient because not all DCOs report the financial information at the DCO level. We request that full financial statements be prepared for each DCO at the DCO legal entity level. Where DCOs have structured themselves with mechanisms to limited recovery to a defined pool of assets (known as "limited recourse structures") we request that these DCOs publicly disclose specific information regarding the total available recourse assets, including, but not limited to, the manner in which the assets are maintained and whether the DCOs capital is funded or unfunded and the manner by which it is segregated.

We commend the DCOs that currently provide this information and believe it is an appropriate practice. Accordingly, we request that the Commission require all DCOs to produce qualitative and quantitative reports of the DCO legal entity, including financial statements, and make them publicly available concurrently with being provided to the Commission.

V. Default Rules and Procedures - §39.16

A DCO's default rules and procedures are critical components of the risk evaluation process. AMG members are supportive of the Commission's proposal to increase the transparency of, and increase participation in, the default process. The Commission is proposing to amend §39.16(c)(1) to require a DCO to have a default committee that would be convened in the event of a default involving substantial or complex positions to help identify market issues with any action the DCO is considering. We agree that DCOs should have a standing committee to address all defaults. Additionally, AMG members agree with the proposed §39.16(c)(2)(ii) that would require a DCO to have default procedures that include immediate public notice on the DCOs website of a declaration of default. We believe these new requirements would serve to increase transparency into the default process and would provide customers with proper notice upon default.

The CFTC and Securities Exchange Commission charged the Options Clearing Corporation with failure to establish and enforce policies and procedures involving financial risk management, operational requirements and information-systems security. AMG believes that an audit requirement of the Qualitative and Quantitative disclosures would have provided management with an early detection of similar gaps in meeting regulatory requirements and provide the market with more accurate disclosures. *See* CFTC Docket 19-19, In the Matter of The Options Clearing Corporation, at https://www.cftc.gov/PressRoom/PressReleases/8000-19 and SEC Administrative Proceeding, In the Matter of The Options Clearing Corporation, File No. 3-19416 at https://www.sec.gov/litigation/admin/2019/34-86871.pdf.

The Commission found the Korea Exchange made a false and misleading certification regarding its compliance with the CPMI IOSCO PFMIs. This reinforces our opinion that disclosures should be subjected to audit at least annually to ensure their accuracy, consistent with what is expected from bilateral counterparties. *See* CFTC Docket 19-10, In the Matter of Korea Exchange Inc., at https://www.cftc.gov/PressRoom/PressReleases/7971-19.

VI. Level of DCO Financial Resources - §39.11

(a) DCO's "Skin-In-The-Game"

DCOs are critical components of capital market infrastructure, whose systemic importance has grown in the wake of the OTC clearing mandate. They must be structured to handle a broad array of market events, and one of the most important components of their structure is the financial safeguard package, or "waterfall." To be sufficiently resilient, a DCO must develop mechanisms to allocate losses that cannot be covered by a defaulter's margin and default fund. This is most often accomplished through mutualized resources from a DCO's clearing members and a small amount of funds committed by the DCO itself. The DCO's contribution is often referred to as "skin in the game" (or "**SITG**") and is generally very low when compared to the quantum of risk the DCO is responsible for managing.[17] We believe DCOs should have meaningful SITG in order to appropriately incentivize the DCO management and shareholders to manage the risks brought into clearing. This view has been reinforced following the recent clearing member default at a non-US CCP which resulted in clearing members bearing the majority of losses.

Given the Commission's re-evaluation of Part 39, we believe the Commission should also take this opportunity to address DCO SITG contributions to default resources. Market participants have long debated the appropriate level of SITG but have failed to come to a consensus. Customers believe SITG should increase, a view strengthened in the recent clearing member default referenced above. There is no regulatory determination on what the SITG commitment should be, leaving DCOs to make this determination themselves, when the incentive for any enterprise is to limit its commitment. We urge the Commission to lead an analytical study on the optimal level of CCP capital and its specific allocation to SITG and provide a robust capital framework and requirement for SITG to the industry to further strengthen DCO resilience.[18]

(b) Proposed Revisions to §39.11

We welcome the changes made to §39.11 in the Proposed Rules, which remove ambiguity from default fund calculation requirements. The proposed changes will require DCOs to make more prudent assumptions when calculating default fund requirements and improve the process of sizing the financial resources package. Additionally, the changes will standardize assumptions and enable customers to make apples-to-apples comparisons between DCOs. In particular, AMG members are supportive of revisions to §39.11(c)(2) that would: (a) require a DCO to calculate its largest financial exposure net of the clearing member's required initial margin amount on deposit, while limiting CCPs to take into account only prefunded financial resources and ignore voluntary excess contributions; (b) require that when stress tests produce loses

[17] *See* SIFMA AMG's Response to the Consultative Report of the Committee on Payments and Market Infrastructures and Board of International Organization of Securities Commissions re: Resilience and recovery of central counterparties; and the Discussion Note of the Financial Stability Board re Essential Aspects of CCP Resolution Planning, dated October 17, 2016, available at https://www.sifma.org/wp-content/uploads/2017/05/sifma-amg-submits-comments-to-cpmi-and-iosco-on-the-consultative-report-and-fsb-discussion-note-regarding-ccp-resiliency-recovery-and-resolution.pdf. (*Stating,* "AMG believes that regulators should develop a formula to set CCP skin-in-the-game and require CCPs to commit that skin-in-the-game to pay uncovered losses due to a clearing member default. Instead of leaving the decision to the discretion of the CCP's board, regulators should establish a minimum standard. In the absence of a formulation proposed by regulators, AMG proposes sizing CCP prefunded skin-in-the-game contributions to the highest of: US$20 million; cover for the third largest clearing member; 12% of the guarantee fund, depending upon risks specific to the individual CCP; or a test specific to the risk profile of the CCP where the other categories do not sufficiently cover the risk. This type of risk-based approach has been recommended for a number of years by both clearing members and asset managers. AMG believes that CCP skin-in-the-game should not count towards the Cover 2 standard, which should be satisfied by other prefunded, liquid financial resources, but rather be an additional prefunded resource available for use during times of market stress. Further, we believe that CPMI and IOSCO should make clear that skin-in-the-game and other capital requirements must be satisfied both during normal market conditions and stressed conditions given the critical function that CCP skin-in-the-game and capital serves.")

[18] In the absence of a robust capital framework and associated requirement for the DCO to commit funds to the waterfall, the CFTC should consider imposing a SITG requirement sized as a percentage of the DCO's default fund.

in both customer and house accounts, a DCO must combine the customer and house stress test losses of each clearing member using the same stress test scenario; and (c) prevent a DCO from netting losses in the house account with gains in the customer account.[19] As indicated in the Proposed Rules, the Commission should revise DCO requirements where possible to ensure consistency with CPMI-IOSCO standards, and importantly for customers, protect customer funds.

AMG is supportive of many of the changes to §39.11, but we believe additional changes are necessary to further strengthen DCO resilience. Specifically, with respect to §39.11(b)(v), which allows the DCO to count unfunded assessments towards resources available to the DCO. While §39.11(d)(2)(vi) requires that the DCO only count the value of assessments, after a haircut, to meet up to 20% of those obligations, we believe it should be zero. The Commission should not allow DCOs to count unfunded liabilities, such as assessments towards cover 1/cover 2 calculations because they are highly likely to be unreliable during times of stress.

VII. Access to Deposit Accounts at the Federal Reserve - §39.33

AMG members support the Commission's proposed §39.33(d) that would require a SIDCO with access to deposit accounts and related services at a Federal Reserve Bank to use such services where practical. Furthermore, we believe that when possible all DCOs should use despite accounts at the Federal Reserve. Accordingly, we recommend that the Commission expand this requirement within proposed §39.33(d) to all DCOs.

We commend the Commission in undertaking the effort to improve the resiliency of DCOs. We thank the Commission for providing SIFMA AMG the opportunity to comment on the proposed amendments. Should you have any questions, please do not hesitate to contact SIFMA AMG at Jason Silverstein at (212) 313-1176 or jsilverstein@sifma.org, or Andrew Ruggiero at (212) 313-1128 or aruggiero@sifma.org.

Sincerely,

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[19] Proposal at 22233.