

February 13, 2023

VIA ELECTRONIC SUBMISSION ([Link](#))
Commodity Futures Trading Commission
Office of Public Affairs
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: The CFTC Notice of Proposed Rulemaking on Reporting and Information Requirements for Derivatives Clearing Organizations

The Global Association of Central Counterparties (“CCP12”) is the international association for CCPs, representing 41 members who operate over 60 individual central counterparties (CCPs) across the Americas, EMEA, and the Asia-Pacific region.

CCP12 appreciates the opportunity to respond to the Commodity Futures Trading Commission (“CFTC” or “the Commission”) Proposed Rulemaking on Reporting and Information Requirements for Derivatives Clearing Organizations¹ (“the Proposed Rulemaking”, “the Proposal”) and commends the CFTC for gathering further information and industry feedback on this important topic. Regulatory reporting is essential information that Derivatives Clearing Organizations (“DCOs”) provide to regulators to ensure the proper oversight of these often systemically important financial market infrastructures.

CCP12 is generally supportive of the Commission’s efforts to update and enhance its data collection from DCOs. Specifically, CCP12 applauds the Commission for proposing to update its rules to remove the requirement to report certain information at the account level, dispensing with no-action relief. In addition, CCP12 appreciates the codification of the Reporting Guidebook in an effort to provide certainty and transparency to DCOs and the broader marketplace, which will support the ongoing accuracy and uniformity of the data collected for surveillance purposes. CCP12 also supports the Commission’s goal of modernizing its reporting in relation to its system safeguards regime, although we do have some concerns about the specifics of the Proposal and have provided some alternatives for the Commission’s consideration.

While we believe that many of the items in the Proposed Rulemaking are likely to have a unique impact on each DCO and would be best addressed via individual DCOs’ own comment letters, there are some areas of the Proposal we would like to comment on as a group as we believe more clarity would be generally beneficial to the industry as a whole.

¹ The Commodity Futures Trading Commission, Proposed Rulemaking on Reporting and Information Requirements for Derivatives Clearing Organizations (November 2022), available at [Link](#).

Detailed comments to selected Proposed Amendments

- **Proposed Amendments to § 39.18(g)**

The proposed amendments to § 39.18 focus on the reporting of exceptional events by DCOs, such as technology issues, security incidents and targeted threats. However, § 39.18(g) proposes to remove the materiality requirement for incident reporting, which would eliminate an important factor used by DCOs to determine whether an event is reportable. This would expand the scope of reportable events to include events that may not actually occur or incidents that would only have a *de minimis* impact on market participants or the clearance and settlement process as a whole. Further, without the materiality component, the number of reportable events will increase significantly, as the Proposal also appears to include non-material incidents of the type that are routinely identified and resolved by a DCO's protocols and escalation procedures before the incidents rise to the level of what is reportable under the current regulations. By way of example, firewalls act as a barrier against brute force attacks and network scans and threats are routinely repelled by a DCO's security protections with no impact on a DCO or its users. Network scans may be a precursor to a more targeted cyber attack and may be considered a cyber event. However, since the firewall dropped the scan, the event would have a *de minimis* impact to the DCOs operations.

As self-regulatory organizations and under the current regulations, DCOs can employ their expertise to evaluate whether an event is material – and therefore reportable – thereby limiting the number of events that must be reviewed by the Commission to those that could potentially have a significant impact on market participants or the clearance and settlement process as a whole. We believe DCOs' experience and expertise in this field, buttressed by their CFTC-reviewed policies and procedures related to incident reporting and the examinations process, is sufficient for DCOs to make informed and accurate judgement about which incidents should be reported. The Proposed Rulemaking eliminates the ability of DCOs to leverage this experience and expertise and will likely result in an exponential increase in notifications, depending on how the proposed definitions are finalized. Notably, this increase in notifications will have limited, if any, corresponding benefit to market integrity considering that non-material incidents are likely to make up the largest component of the newly reportable events. CCP12 strongly believes that the Commission's current tools, such as the review of DCO rule submissions and the examinations process, as well as informal dialogue with DCOs, are much more suitable tools for ensuring that the Commission has the information it needs to conduct its ongoing surveillance of DCOs' system safeguards and promoting the appropriate reporting of material incidents.

The Proposal rightly recognizes that the reporting of non-material incidents will increase the burden on DCOs, but perhaps even more concerning will be the additional burden on the Commission. In CCP12's estimation, this proposed requirement will lead to hundreds of additional notifications. Without the materiality factor, the Commission will be tasked with expending staff's resources on the parsing of incidents for their potential impact on the markets rather than focusing on material events and their remediation, which could have broader impacts to the DCOs and financial markets more broadly. Widespread DCO reporting of non-material incidents to the Commission has the potential to divert Commission resources from areas of risk that merit increased Commission surveillance to areas that

pose less significant risks to the market without an equal benefit of sector-wide learning from these newly reported events.

In past rulemakings, the Commission has taken a risk-based approach to DCO reporting obligations, recognizing the value in allowing DCOs to determine what is material relative to their operations in the context of reportable events.² Thus, the removal of the materiality component in the proposed amendments to § 39.18 is inconsistent with the CFTC’s long history of including materiality standards with respect to reportable events for DCOs, such as those defined under § 39.19(c)(4). As an example, when the Commission previously contemplated the adoption of a reporting requirement for margin model issues that did not have a materiality component, in the final rule, the Commission amended its initial proposal to include a materiality component, stating it “believes that reporting only margin model issues that materially affect the DCO’s ability to calculate or collect initial margin or variation margin, as opposed to all margin model issues, strikes an appropriate balance between supplying the Commission with information needed for effective oversight of DCOs, without placing an undue burden on the DCOs.”³ We believe that keeping the materiality threshold for reporting cyber incidents intact is necessary to maintain a consistent risk-based approach by the Commission, as well as to comport with other regulatory agencies where there is an explicit intent to limit the frequency and volume of event notices in order to focus resources on the most significant events.⁴ CCP12 observes that the SEC’s Reg SCI affirmatively provides “appropriate exceptions from reporting and dissemination for events that have no or de minimis impacts on an SCI entity’s operations or market participants.”⁵ These exceptions appear to reflect a clear recognition that an SCI entity is best situated to determine which events have material impacts and should be reported to the SEC.

CCP12 recognizes that the Proposal does reference situations where it is believed that material incidents were not reported. As an industry association, CCP12 fully supports the Commission’s goals of ensuring that all material incidents are reported within the required timeframes and stands ready to work with the Commission and its membership to achieve this goal. However, CCP12 does not believe that requiring reporting of every incident, regardless of materiality, is the most efficient way to accomplish this goal, nor do we believe it would provide the risk management or supervisory benefits the Commission is seeking. In its consideration of the costs and benefits of the Proposal, the sole benefit articulated by the Commission was “additional clarity and certainty regarding [DCO] obligations.”⁶ For the reasons stated above, CCP12 does not believe that the proposed requirements are clearer. As an alternative, CCP12 requests that the Commission consider providing a non-exhaustive list of examples that would be considered material and reportable under the rule that may serve to guide DCOs in the expectations of the Commission for reportable events.

² CFTC, Final Rule on Derivatives Clearing Organization General Provisions and Core Principles (January 2020), at p. 4819-4822, available at [Link](#).

³ *Id.*, at p. 4822.

⁴ Cyber Incident Reporting for Critical Infrastructure Act of 2022 (CIRCA), available at [Link](#); SEC Regulation Systems Compliance and Integrity (“Regulation SCI”) (November 2014), available at [Link](#).

⁵ SEC Regulation SCI, *id.*, at p. 117.

⁶ CFTC, Proposed Rulemaking, *op.cit.*, at p. 53.

Moreover, it appears that the Commission is significantly underestimating the impact that proposed § 39.18 could have due to the increase in the scope of the reporting obligations. The cost-benefit considerations state that the Commission expects the Proposed Rulemaking to require an additional four reports per year. CCP12 believes that the number of reportable events would be significantly higher. In this context, the stated cost of \$152 also seems to be considerably underestimated and basing the number of additional incident reports “on recent levels of reporting”⁷ does not provide the Commission nor the public with the amount of detail necessary to evaluate the Proposal’s costs. For comparison, the SEC estimated in its 2014 Regulation SCI final rule, following input by potentially impacted entities, that there would be 24 systems disruptions, 20 systems compliance issues, and one systems intrusion per year for each SCI entity and an overall burden estimate of 1,080 hours per entity for events that are not *de minimis*. This would certainly exceed the Commission’s estimated cost of \$152 a year for the additional reporting. The 1,080 hours a year estimated by the SEC is likely significantly below the added burden that would result from a codification of the Proposal, especially considering that the Proposal includes the reporting of *de minimis* events. Furthermore, with regard to systems that do not perform a market function (e.g., HR systems), CCP12 does not believe that these additional costs provide a regulatory benefit or support the Commission’s goals.

Additionally, DCOs have negotiated contracts with third-party services and systems providers that detail third-party reporting obligations. Expanding the scope of reportable incidents to non-material incidents may mean that those contracts would need to be reviewed and renegotiated – and most likely at a higher cost – to ensure that DCOs can meet the proposed reporting requirements (e.g., inclusion of non-material incidents).

In its consideration of the 15(a) factors, the Commission states that the proposed changes could have a beneficial impact on the protection of market participants and the public and ensuring or enhancing sound risk management practices, “[t]o the extent that the proposed amendments to § 39.18(g) reduce, through increased awareness and vigilance or through improved information collection and dissemination, the likelihood or severity of hardware or software malfunctions, operator errors, or security incidents or threats.”⁸ If the rule is finalized as proposed and the end result is primarily an increase in the amount of non-material or *de minimis* incidents that are reported, CCP12 believes that these benefits are unlikely to materialize and could potentially be thwarted.

- **Proposed Amendments to § 39.18(a)**

With reference to § 39.18(a), we believe the broad definition of a “hardware or software malfunction”⁹ as “any circumstance where an automated system or a manually initiated process fails to function as designed or intended” and a lack of definition of a potentially very broad term of an “operator error”, combined with the removal of the materiality component, is another expansion in scope that is likely to result in even more notifications that would be of little risk management or regulatory value to the Commission. For example, all CCPs routinely deal with very minor systems events, which are addressed

⁷ *Id.*, at p. 54.

⁸ *Id.*

⁹ “*Hardware or software malfunction* means any circumstance where an automated system or a manually initiated process fails to function as designed or intended, or the output of the software produces an inaccurate result.”, *id.*, at p. 74.

with immediate fixes or work arounds before such an event can cause any significant and/or external impacts. Under the proposed amendments, these events could be deemed reportable despite providing limited to no value to the Commission or otherwise. Similarly, “automated systems” are defined so broadly in the Proposal that it is difficult to identify a part of a DCO’s network that does not meet the definition. The scope of the Proposal is further expanded by the fact that it appears to capture systems or events with no relation or impact to the CFTC’s markets. Therefore, we would also urge the Commission to leave the decision as to when there is material impairment, or significant likelihood of material impairment, on automated systems’ operation, reliability, security, or capacity to the discretion of DCOs.

- **Additional Proposed Reporting Fields for the Daily Reporting Requirements – § 39.19(c)(1)**

The Commission is also proposing to require that a DCO include in its daily reports precise timing information about variation margin calls and payments. The Commission has also requested comment on the alternative of reporting margin call and payment information on a bucketed approach (beginning, middle and end of day). We believe the bucketed approach would avoid confusion over individual cash flows while simplifying DCOs’ reporting obligations. This will additionally ease the job of the Commission as only data relevant to the purpose of their review will be provided. Furthermore, the Commission should consider the impact the requirement to include timing information about variation margin calls and payments would have not only on DCOs, but also on settlement banks which would have to develop further automated systems to communicate timestamps to DCOs. Settlement banks have various potential options for collection of variation margin payments on behalf of DCOs, both using SWIFT and non-SWIFT, which can make this reporting requirement unnecessarily complex. CCP12 also supports the Proposal’s inclusion of the actual trade date for each position in daily reporting for certain products, but would request clarity on whether “actual trade date” relates to an economically agreed date or the execution date.

While CCP12 is a strong proponent of transparency, we do not support the Proposal’s requirement to provide settlement prices data for futures and options contracts with no open interest. In many cases, DCOs already calculate and report settlement prices for contracts with no open interest where they believe those prices provide a benefit to DCOs themselves or the marketplace, but in CCP12’s view requiring DCOs to report such data for all contracts with no open interest would be of questionable value for analytical or regulatory purposes. As such, CCP12 would prefer that DCOs continue to be afforded the discretion to determine if they report settlement prices to the CFTC in cases where there is no open interest. CCP12 also requests clarity with respect to how the settlement pricing information should be reported where related positions do not exist and the scope of what has been proposed.

In the event that the Commission elects to go forward with requiring the additional reporting items, CCP12 requests that the Commission grant suitable lead time in order to ensure that the DCOs revised reporting will be able to satisfy the requirements.

- **Daily Reporting of Variation Margin and Cash Flows – § 39.19(c)(1)(i)(B) and (C)**

CCP12 applauds the Commission’s proposal to remove the requirement that “a DCO report daily variation margin and cash flows by individual customer account”¹⁰ as indeed “many DCOs do not possess customer-level information regarding variation margin and cash flows”¹¹.

- **Individual Customer Account Identification Requirements – § 39.19(c)(1)(i)(D)**

CCP12 notes that in some cases DCOs are not provided LEIs by clearing members and is therefore supportive of the Proposal to identify each individual customer account by LEI and internally-generated identifier, where available.

¹⁰ *Id.*, at p. 17.

¹¹ *Id.*, at p. 16.

About CCP12

CCP12 is the global association for CCPs, representing 41 members who operate over 60 individual central counterparties (CCPs) across the Americas, EMEA, and the Asia-Pacific region.

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

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

CCP12 Members

