

further the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The self-regulatory organization does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-97-05 and should be submitted by March 21, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) thereunder.

The Commission believes that it is reasonable for de Jager & Company to be released from liability for any damages, claims, losses, or expenses related to the accuracy or completeness of the Index or caused by errors in the Index calculation. The Commission notes that de Jager & Company will not be involved, except in the limited advisory capacity described above, in the calculation or maintenance of the Index.

The Commission finds good cause to approve the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register in that this rule filing is being filed in connection with the Exchange's proposal to list and trade options on the Index, which has been given summary effectiveness treatment pursuant to Section 19(b)(3) of the Act.⁸ In addition, this proposal raises no new issues as the Commission has previously approved similar proposals by the Amex to release various entities from certain liability for damages resulting from the use of their products where these entities have no active role in the trading and calculation of the index value.⁹ Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)¹⁰ of the Act, that the proposed rule change (File No. SR-Amex-97-05) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

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[Release No. 34-38328; International Series Release No. 1058; File No. 600-29]

Self-Regulatory Organizations; Cedel Bank; Order Approving Application for Exemption From Registration as a Clearing Agency

February 24, 1997.

On August 31, 1995, Cedel Bank, société anonyme, Luxembourg ("Cedel")¹ filed with the Securities and

Exchange Commission ("Commission") an application on Form CA-1² for exemption from registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 ("Exchange Act")³ and Rule 17Ab2-1 thereunder.⁴ Notice of Cedel's application was published in the Federal Register on June 19, 1996.⁵ Eleven comment letters were received in response to the notice of filing of the Cedel application.⁶ This Order grants Cedel's application for exemption from registration as a clearing agency to permit Cedel to offer clearance, settlement, and credit support services to U.S. and non-U.S. entities for transactions in U.S. government securities subject to the conditions and limitations that are set forth below.

parent company, Cedel International, was created into which Cedel transferred the nonbanking subsidiaries. Cedel Bank is a wholly-owned subsidiary of Cedel International. Cedel Bank is licensed in Luxembourg both as a bank and as a "professionnel du secteur financier" ("PSF") and is under the supervision of the Institut Monétaire Luxembourgeois ("IML"), Luxembourg's banking and securities regulatory authority. Cedel International is licensed as a non-bank PSF and also is under the supervision of the IML. The IML establishes capital and liquidity requirements, evaluates the financial condition and performance of all Luxembourg financial institutions, conducts on-site inspections, and monitors all financial institutions and their controlling companies for adherence to Luxembourg laws and regulations. On April 24, 1996, the Federal Reserve Board granted Cedel Bank's request to establish a representative office in New York.

² Copies of the application for exemption are available for inspection and copying at the Commission's Public Reference Room.

³ 15 U.S.C. 78q-1.

⁴ 17 CFR 240.17Ab2-1.

⁵ Securities Exchange Act Release No. 37309 (June 12, 1996), 61 FR 31201 (notice of filing of application for exemption from registration as a clearing agency) ("Cedel Notice").

⁶ Letters from John H. Huffstutler, Senior Vice President and Chief Regulatory Counsel, Bank of America National Trust and Savings Association (July 17, 1996); Guillaume de Beaufort, Administration Head, Paribas Capital Markets (July 18, 1996); Pierre Vermenouze, Senior Vice President, Banque et Finance Internationales (July 17, 1996); Thomson Ng, Executive Director of Operations, Fuji International Finance (HK) Limited (July 18, 1996); John Macfarlane, Managing Director, Salomon Brothers Inc (July 19, 1996); Monroe R. Sonnenborn, Managing Director, Morgan Stanley & Co. Incorporated (July 22, 1996); Jean-Marie Grenet, Operations Head, and Jimmy Hew, Deputy Operations Head, Paribas Merchant Banking Asia Limited (July 23, 1996); Lo Kit-sang, Manager, Sin Hua Bank Ltd. (July 22, 1996); Fan Jian Hua, Manager, and Zhu Wen Xiang, Chief Dealer, The Investment Company of The People's Republic of China (Singapore) Pte Ltd (July 26, 1996); Gilbert Lee and Richard Yiu Tak Shing, Bannque Nationale de Paris (July 29, 1996); and Augustine Chua, Deputy Manager, Rapobank (August 1, 1996) to Jonathan Katz, Secretary, Commission. These comment letters for File No. 600-29 are available for inspection and copying in the Commission's Public Reference Room.

⁸ See *supra* note 3.

⁹ See Exchange Rules 902C(c), (d), and (e).

¹⁰ 15 U.S.C. § 78s(b)(2) (1988).

¹¹ 17 CFR 200.30-3(a)(12).

¹ Cedel, société anonyme (formerly the Centrale de Livraison de Valeurs Mobilières) was established in 1970. On January 1, 1995, Cedel, société anonyme was converted into Cedel Bank to perform lending, clearing, and settlement activities, and a

I. Description of Cedel's Proposed Services⁷

A. Clearance and Settlement

Cedel currently offers to its customers international clearance and settlement of securities transactions in primary and secondary markets, trade confirmation, securities custody, and securities lending services. Cedel processes fixed income bonds such as Eurobonds, domestic and convertible bonds, money market instruments, short and medium term notes, equities, and warrants.

Cedel provides delivery-versus-payment ("DVP") settlement for securities transactions.⁸ DVP settlement is made possible by the legal environment for securities custody and transfer in Luxembourg.⁹ Liquidity facilities are negotiated with financial institutions to permit Cedel to extend financing to customers to meet their settlement requirements in local currencies.¹⁰

Cedel's presettlement trade matching service consists of a trade comparison system that allows customers in both Cedel and Euroclear¹¹ to compare their trade data. Incoming trade data is compared in one of four daily matching runs. Information on the status of a transaction is made available to the counterparties ninety minutes after processing of the trade data for each matching run.

Cedel operates two securities processing systems, overnight settlement processing and daytime

settlement processing.¹² Overnight processing is possible because of the bridge agreement established between Cedel and Euroclear.¹³ The bridge agreement facilitates the two-way exchange of counterparty data, enabling both Cedel and Euroclear to settle overnight and to provide early morning position statements. With multiple overnight processing, Cedel's customers can settle trades with Euroclear participants for same day value. Multiple overnight processing also allows "chaining" of securities transactions in and between Cedel and Euroclear.¹⁴

Each settlement within the overnight and daytime processing systems is distinguished by whether it is an "internal" or "external" settlement at Cedel.¹⁵ Settlement services are performed at Cedel without notifying or instructing its securities depositories. Funds transfers necessary to settle transactions may be made to or from an account maintained at Cedel or to or from one of its correspondent banks. Because transfers or securities accepted at both Euroclear and Cedel may be settled and cleared through the bridge, Cedel treats settlements between customers of Cedel and Euroclear involving such securities as internal.

Transactions for settlement on a given day are matched at Cedel and are settled if the delivering party has unencumbered securities sufficient to make delivery¹⁶ and the receiving party has sufficient cash and facilities to pay for the securities.¹⁷ If either condition is not met, the transaction will fail. If

securities are delivered against uncollected or borrowed funds, a collateral interest is taken in the receiving participant's securities holding within the system to secure the creditor.¹⁸

B. Global Credit Support Service

One of the primary reasons for Cedel's request for exemption from registration as a clearing agency is the implementation of the Global Credit Support Service ("GCSS").¹⁹ GCSS is a book-entry, real-time collateral management service for cross-border securities collateralization. GCSS is intended to enable GSCC customers to reduce the credit risk associated with their financial exposures to counterparties by offering an efficient and safe means of monitoring exposure and by providing credit support for GCSS customers using a variety of bilateral credit support legal arrangements.²⁰ GCSS functions include the standard functions of an agent, such as exposure recording, asset valuation and movement, safekeeping, and reporting. GCSS interposes itself as an operational agent but does not assume any principal or decision-making role in the event of disputes between parties.

All cash and securities in GCSS are held in an omnibus account within the Cedel core clearance and settlement system. Transfers into and out of GCSS are made by book-entry transfer of securities from a GCSS customer's account or from a GCSS customer's correspondent account at Cedel to GCSS's omnibus account at Cedel.²¹

GCSS customers will inform GCSS of the level of exposure from their net counterparty positions to be covered by GCSS. This exposure level will be the

⁷ A more complete description of Cedel's clearance, settlement, and credit support services, is contained in the Cedel Notice *supra* note 5.

⁸ In 1995, Cedel settled over US\$10 trillion worth of securities. At that time, over 75,000 instruments were eligible for settlement in the Cedel system.

⁹ The Luxembourg legal framework provides for the finality of settlements on Cedel's books and the fungibility of securities deposited with Cedel.

¹⁰ To enable it to extend such financing, Cedel maintains a US\$10 billion committed revolving credit facility with a syndicate of major banks, a US\$500 million commercial paper facility and approximately US\$8 billion of uncommitted lines of credit available. Cedel also has a US\$1.8 billion letter of credit guaranteeing transmissions across the bridge established between Cedel and the Euroclear System ("Euroclear"). In addition, Cedel can access uncommitted lines of credit with domestic lenders in each of the thirty countries where Cedel has established a settlement link to provide its customers with foreign currency settlement capabilities.

¹¹ Similar to Cedel, Euroclear provides clearance and settlement services for internationally traded debt and equity securities. Euroclear is operated under contract with the Euroclear Clearance System, société coopérative ("Euroclear Cooperative"), by Morgan Guaranty Trust Company of New York through its Euroclear Operations Centre in Brussels. The Euroclear Cooperatives is a Belgian cooperative corporation whose participants include international banks, brokers, and other securities professionals. See *infra* note 13.

¹² Daytime and overnight settlement processing are the same except that securities lending and borrowing services are not available to customers on an automatic basis in overnight settlement processing.

¹³ The electronic bridge enables trades to be processed on a book-entry basis between Cedel and Euroclear rather than by the physical delivery of securities.

¹⁴ Cedel's chaining system allows securities to be bought and sold many times during the day. Cedel's chaining program scans open transactions until all cash and securities resulting from same-day settlement are reemployed to settle further transactions of same-day value. Therefore, back-to-back transfers for equivalent funds may not create net payment obligations because customers can use proceeds from sales to settle purchases.

¹⁵ An internal settlement is the settlement of a transaction between two Cedel customers where the securities being transferred are maintained by book-entry at Cedel. An external settlement is the settlement of a transaction where one of the counterparties to a transaction is not a Cedel (or Euroclear) customer or where a Cedel customer is transferring securities that are not maintained by book-entry at Cedel.

¹⁶ The securities may be owned outright or borrowed.

¹⁷ Acceptable cash and credit facilities for a customer include cash in its account, pre-advice of funds to be received that day, and any predetermined borrowing capacity.

¹⁸ Because Cedel does not interpose itself between counterparties or otherwise guarantee settlement of securities transactions in its clearance and settlement system, Cedel believes its operations are essentially devoid of settlement risk to Cedel and therefore Cedel does not rely on a clearing fund or the resources of its customers.

¹⁹ GCSS became operational on September 30, 1996 with four institutions, including Bank of America, Banque Paribas, Dresdner Bank, and Salomon Brothers.

²⁰ Each GCSS customer can establish the parameters of their bilateral arrangements, which are captured by GCSS. A pair of GCSS customers generally will have one agreement although GCSS can provide for multiple agreements. Each agreement will define such things as the eligible collateral, haircuts, rehypothecation authorization, frequency of exposure entry and securities valuation, and minimum transfer amounts. Eligible collateral can be selected from any of the securities or currencies accepted by Cedel. GCSS customers also may establish counterparty-specific eligibility tables to either restrict or broaden their eligibility criteria and/or haircuts.

²¹ There is no requirement that a GCSS customer have an account at Cedel in order to utilize the services provided by GCSS.

basis on which GCSS will compute credit support requirements for the period.²² Based on the size of the net exposure and the terms of the bilateral agreement between two GCSS customers, GCSS moves free of payment securities and/or cash between the parties' accounts. GCSS reports to each GCSS customer their available positions (*i.e.*, the customer's own securities and cash it has in the system that are not in use), the amounts delivered out, the amounts received, the amounts "on-transferred,"²³ new credit support amounts expected in from counterparties, and new credit support amounts required.²⁴

One of the more important services offered by GCSS allows customers to reuse the securities held as credit support. For those GCSS customers permitted by their counterparties to reuse assets, GCSS will enable "on-transfer" of securities. GCSS will track and value assets subjected to on-transfers and will keep records of the original and all subsequent transferrers and transferees of the asset. Where on-transfers are permitted, a position may be subdivided and on-transferred to multiple counterparties.

U.S. Treasury securities ("U.S. Treasuries") are the preferred securities for use as collateral in securing international credit obligations arising from derivatives activities or otherwise. Therefore, Cedel believes it is essential that it be able to accept U.S. Treasuries in GCSS if it is to efficiently facilitate cross-border collateralization. In part, it is the "on-transfer" or rehypothecation of U.S. government securities by or for U.S. entities in GCSS that subjects Cedel

to the clearing agency registration requirements of Section 17A.²⁵ As a condition of the no-action position provided to Cedel in 1993, Cedel agreed not to act as an agent in facilitating repurchase agreements between Cedel customers and others with regard to U.S. Treasuries and agreed that none of the collateral services performed by Cedel would be such that the services could be interpreted as authorizing the purchase and sale of U.S. Treasuries, including repurchase agreement transactions, by Cedel's customers or affiliates using Cedel's systems.

C. Securities Lending and Borrowing Services

Under Cedel's lending and borrowing service, all customers are required to act as principal and Cedel's role is to effect the transfers for the lending or borrowing transactions by book-entry movement in the Cedel system and to monitor the associated collateral. Customers elect to participate as either

"automatic"²⁶ or "case by case"²⁷ lenders or borrowers.²⁸ A syndicate of banks guarantees borrower performance and each borrower is required to post and maintain collateral sufficient to secure the guarantee obligation of the guarantor syndicate.²⁹

D. Credit Facilities

Cedel provides four main types of credit facilities to its customers: pre-advice, technical overdraft facilities ("TOF's"), tripartite financing arrangements ("TFA's"), and unconfirmed funds facilities ("UFF"). Customers can obtain short term credit through the use of pre-advice.³⁰ TOF's are short-term financing facilities used to facilitate clearance of securities transactions against payment.³¹ Cedel also acts as collateral agent in specifically negotiated TFAs, which provide longer term financing for

²⁶ As either an automatic lender or automatic borrower, a customer authorizes Cedel to lend or borrow securities upon the identification of an excess of securities in a lender's account or an insufficiency in a borrower's account.

Automatic borrowings only may occur when there is an adequate volume of eligible securities available from a lender participating in the program and the borrower is eligible to borrow under the terms of the program.

²⁷ Case by case borrowings are handled by Cedel in chronological sequence of receipt of instructions. As a case by case lender or as a case by case borrower, a customer is required to authorize each loan or borrowing.

²⁸ Cedel effects loans and borrowings for automatic lenders and automatic borrowers before it effects loans and borrowings for case by case lenders and case by case borrowers.

²⁹ The collateral, which can be qualifying securities or cash, is blocked in the borrower's account by Cedel for the benefit of the guarantors. Cedel monitors the collateral daily to ensure that the collateral value of the securities or cash is at all times greater than or equal to the market value of the securities loaned plus an additional percentage of the market value.

³⁰ Under the pre-advice service, a customer notifies Cedel that funds will be received in the customer's account on that day or the next day. On the basis of this pre-advice, Cedel will credit the amount of funds to the customer's account prior to actual receipt up to the maximum pre-advice line of credit established for the customer. During any business day, Cedel will not advance an amount that exceeds the amount of the line of credit or the collateral value of qualifying securities held in the customer's account.

³¹ Under the TOF service, Cedel pays the selling customer in advance of receipt of payment by the purchasing customer. To protect itself from market and credit risk, Cedel blocks the securities in the purchasing customer's account to ensure that the purchasing customer does not remove the securities until it clears its net debit position. If the purchasing customer fails to clear its net debit position within forty-eight hours, Cedel can liquidate the customer's assets to satisfy the net debit position. In addition, Cedel is granted a lien on all securities and other assets in a participating customer's account with Cedel pursuant to a TOF agreement between Cedel and its customer to cover any additional losses which may be incurred.

²² GCSS will operate two main daily processing cycles to provide credit support and to generate reports. GCSS customers will select which of the two cycles they will use. The cycle will provide assessments of existing credit support and required additional assets which counterparties may satisfy in the next cycle or at the latest in the same cycle on the next day.

²³ GCSS customers will indicate in their GCSS agreement whether they will permit counterparties to reuse assets. If so permitted, counterparties may then transfer within GCSS the securities they have received as credit support ("on-transfer") or remove the securities from GCSS and enter into repurchase or reverse repurchase agreements.

²⁴ GCSS may notify a GCSS customer of the need to bring more assets into the system to meet a shortfall in the value of credit support assets at GCSS. GCSS customers will be able to move assets to their GCSS account in several ways: by transferring eligible assets from a clearing and settlement account in Cedel during the next available Cedel processing cycle, by providing GCSS with a power of attorney to transfer assets from its clearing and settlement account at Cedel to its GCSS omnibus account at Cedel, by entering into a securities borrowing arrangement within a Cedel clearing and settlement account to obtain a loan of the required securities, or by moving eligible securities over a cross-border link into Cedel.

²⁵ In 1993, Cedel requested a no-action position from the Division relating to Cedel's providing clearance, settlement, and other services to participants in U.S. government securities. The Division issued a no-action letter to Cedel on September 15, 1993, stating that the staff of the Division would not recommend to the Commission that it take enforcement action if Cedel accepts U.S. Treasury debt securities maintained in book-entry form as collateral for certain obligations of Cedel's customers without registering as a clearing agency pursuant to Section 17A of the Exchange Act. The no-action letter did not extend to clearance and settlement services for Cedel customers in U.S. government securities. *Letter regarding Cedel S.A.* (September 15, 1993).

Under Section 3(a)(23) of the Exchange Act, the term "clearing agency" is defined to mean, among other things, any person, such as a securities depository, who permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates. Cedel's proposal for the implementation of GCSS places Cedel within the scope of the activities of a clearing agency because GCSS could be deemed to permit or facilitate the hypothecation or lending of U.S. securities in a book-entry environment. However, the activities of GCSS are not the sole basis for considering Cedel's proposed activities to be those of a clearing agency. Cedel's proposal, which originally included the clearance and settlement of all U.S. securities involving U.S. entities, also places Cedel within the definition of clearing agency for purposes of Section 17A of the Exchange Act. Although this Order limits the exemptive relief sought by Cedel to U.S. government securities and will not include all U.S. equity and debt securities, the classification of Cedel as a clearing agency for purposes of Section 17A is not affected.

customers than pre-advice and TOFs.³² Use of a customer's UFF to finance settlements is allowed only at Cedel's discretion. If a customer's TOF or TFA is insufficient to settle all securities transactions on its account in a given settlement processing, Cedel may permit the customer to use its UFF for settlement purposes.³³

II. Comment Letters

The Commission received eleven comment letters in response to the notice of filing of the Cedel application.³⁴ All were favorable towards granting Cedel an exemption from registration as a clearing agency. Each of the commenters discussed the importance of allowing U.S. Treasuries to be accepted into the Cedel system and the utility of GCSS in providing an efficient global credit risk management tool for over-the-counter collateralized derivatives activities. With regard to Cedel's proposal to offer clearance and settlement services, commenters pointed to the increased access to U.S. markets and a standardization of clearance and settlement formats that would be afforded to Cedel's customers under the exemption. Commenters also favored an exemption from registration as a means to preserve the existing commercial relationships that exist among Cedel and its customers under Luxembourg law.

Furthermore, commenters stressed that because U.S. Treasuries are the dominant and preferred class of collateral for derivatives transactions, inclusion of these securities in GCSS will increase the effectiveness and utilization of GCSS,³⁵ which in turn

³² Generally, the TFA is an agreement between three parties, the borrower (Cedel customer), the lender (the financing bank), and the collateral agent (Cedel). Cedel may introduce lenders to borrowers but does not play a substantial role in the negotiations of TFAs. After a TFA has been negotiated, Cedel acts solely as collateral agent whereby Cedel determines the adequacy of and monitors the pledged collateral which is blocked in the borrowing customer's account with Cedel. Cedel bears no credit exposure with regard to TFAs.

³³ A customer's UFF limit is dependent to a large extent upon the financial standing of the institution. The UFF also must be collateralized. By blocking collateral against unconfirmed funds, Cedel believes that it covers the contingent risk that anticipated funds may not be received. As with TOFs and TFAs, only the actual amount of credit drawn under the UFF must be collateralized.

³⁴ *Supra* note 6.

³⁵ One commenter pointed out that the inclusion of U.S. Treasuries in Cedel's processing systems would benefit U.S. banks in their management of derivatives exposure because such banks could utilize commonly held U.S. Treasuries in GCSS rather than non-U.S. securities which would have to be purchased by U.S. banks in the market. Letter from John H. Huffstutler, Senior Vice President and Chief Regulatory Counsel, Bank of America National Trust and Savings Association, to Jonathan Katz, Secretary, Commission (July 17, 1996).

could reduce the exposure associated with under- or non-collateralized derivatives transactions conducted by U.S. and non-U.S. entities. Commenters believed that GCSS will solve many of the legal complexities and will reduce the legal uncertainties associated with cross-border collateralization. Commenters did not specifically discuss the unique or additional benefits to be derived from permitting Cedel to provide securities processing services for U.S. securities other than U.S. Treasuries.

III. Discussion

A. Statutory Standards

Section 17A of the Exchange Act directs the Commission to promote Congressional objectives to facilitate the development of a national clearance and settlement system for securities transactions.³⁶ Registration of clearing agencies³⁷ is a key element of the regulation of clearing agencies in promoting these statutory objectives. Before granting registration to a clearing agency, Section 17A(b)(3) of the Exchange Act requires that the Commission make a number of determinations with respect to the clearing agency's organization, capacity, and rules.³⁸ The Commission has published the standards applied by its Division of Market Regulation in

³⁶ 15 U.S.C. 78q-1. Section 17A(a)(1) provides:

(1) The Congress finds that—

(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

(C) New data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

For legislative history concerning Section 17A, see, e.g., Report of Senate Comm. on Housing and Urban Affairs, Securities Acts Amendments of 1975: Report to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess., 4 (1975); Conference Comm. Report to Accompany S. 249, Joint Explanatory Statement of Comm. of Conference, H.R. Rep. No. 229, 94th Cong., 1st Sess., 102 (1975).

³⁷ "Clearing agency" is defined in Section 3(a)(923) of the Exchange Act, 15 U.S.C. 78c(a)(23).
³⁸ 15 U.S.C. 78q-1(b)(3). See also Section 19 of the Exchange Act, 15 U.S.C. 78s, and Rule 19b-4, 17 CFR 240.19b-4, setting forth procedural requirements for registration and continuing Commission oversight of clearing agencies and other self-regulatory organizations.

evaluating applications for clearing agency registration.³⁹ These requirements are designed to assure the safety and soundness of the clearance and settlement system.

Section 17A(b)(1), moreover, provides that the Commission:

* * * may conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provisions of [Section 17A] or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of [Section 17A], including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.⁴⁰

The Commission reviews every application for exemption against the standards for clearing agency registration.⁴¹

B. Evaluation of Cedel's Application for Exemption

The Commission has evaluated Cedel's application and the comments received under the above standards. In this context, the Commission recognized that certain organizational, operational, and jurisdictional differences would prevent Cedel from being able to comply fully with all of the registration provisions. The evaluation also is made in the context of the conditions that the Commission will include in the exception granted in this Order.

1. Safeguarding of Securities and Funds

Sections 17A(b)(3)(A) and (F) of the Exchange Act require a clearing agency be organized and its rules be designed

³⁹ Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Release"). See also, Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (omnibus order granting registration as clearing agencies to The Depository Trust Company, Stock Clearing Corporation of Philadelphia, Midwest Securities Trust Company, The Options Clearing Corporation, Midwest Clearing Corporation, Pacific Securities Depository, National Securities Clearing Corporation, and Philadelphia Depository Trust Company).

⁴⁰ 15 U.S.C. 78q-1(b)(1).

⁴¹ The first exemption from clearing agency registration was granted in 1995. Clearing Corporation for Options and Securities, Securities Exchange Act Release No. 36573 (December 12, 1995), 60 FR 65076. The Commission has granted temporary registrations that included exemptions from specific Section 17A statutory requirements in a manner designed to achieve the statutory goals of Section 17A. In granting these temporary registrations it was expected that the subject clearing agencies would eventually apply for permanent clearing agency registration. See, e.g., Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839 (order approving Government Securities Clearing Corporation's temporary registration as a clearing agency with a temporary exemption from compliance with Section 17A(b)(3)(C)).

to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to safeguard securities and funds in its custody or control or for which it is responsible.⁴² The Commission believes that Cedel substantially satisfies these standards. Among other things, Cedel has established an audit committee which provides oversight of Cedel operations, financial arrangements, and performance, and acts as a link between the external auditors and the Board of Directors.⁴³ Cedel also maintains an internal audit department that, in conjunction with its external auditors, maintains an ongoing detailed audit program for Cedel's operations. Audit reports are issued monthly to appropriate levels of management with a complete report to the chief executive officer of Cedel.⁴⁴ The internal audit department is independent of line functions and its chief audit reports directly to the chief executive officer of Cedel.

Internal accounting controls for Cedel have been designed to provide reasonable assurance that at a minimum (i) transactions are executed in accordance with proper authorization, (ii) transactions are recorded as necessary to permit the preparation of conforming financial statements and to maintain accountability for assets, (iii) access to assets or systems for recording interests in assets is restricted only to those with specific authorization by Cedel management, and (vi) recorded asset inventories are compared with actual asset inventories at regular intervals and appropriate actions are taken with respect to any differences. The adequacy of internal accounting controls is audited annually by Cedel's external auditors. In addition, the IML has the authority to instruct the external

auditors to undertake reviews of any further matters of particular interest.⁴⁵

a. Organization and Processing Capacity. A clearing agency must be organized in a manner that effectively establishes operational and audit controls while fostering director independence.⁴⁶ Cedel's Board of Directors is kept apprised of Cedel's operations through its audit committee as well as the chief auditor from the independent internal audit department.⁴⁷ Together, Cedel's audit committee, internal audit department and various internal advisory groups provide Cedel's Board with risk assessment information and are positioned to advise the Board of the impact that new or expanded services and volume may have on Cedel's processing capacity. Accordingly, the Commission is satisfied that Cedel's organizational and processing capacity substantially satisfies the requirements of the Exchange Act as explained in the Standards Release because Cedel's internal organizational structure is reasonably designed to provide the necessary flow of information to its Board of Directors which should allow the Board to oversee Cedel's operations and management's performance to assure the operational capability and integrity of Cedel.

b. Financial Reports. According to the Standards Release, clearing agency participants that have made clearing fund contributions or have money or securities in the custody or control of a clearing agency should receive timely, audited annual financial statements. Cedel has custody of customer funds and securities. Cedel provides customers and shareholders with annual audited financial statements and company reports. The financial statements of Cedel and Cedel International, its parent, are not consolidated and are presented in accordance with European Union and Luxembourg regulatory requirements for

the preparation of financial statements.⁴⁸

c. Financial Risk Management. The Standards Release states that a clearing agency should establish a clearing fund and promulgate rules to assure an appropriate level of contributions in accordance with, among other things, the risks to which the clearing agency is subject for the protection of clearing agency participants and for the national system for clearance and settlement.⁴⁹

As discussed in Section I.B above, Cedel provides DVP settlement for securities transactions which are then batched for evening or morning processing depending upon when they are received. Cedel utilizes credit facilities to avoid transaction failures but does not maintain a clearing fund. Cedel does bear risk resulting from pre-advice that are not subsequently confirmed. Although according to Cedel the number of pre-advice failures is reportedly low, such failures could become more prevalent during times of market stress when the value of collateral supporting Cedel's credit facilities could decline in excess of the exposure created by the pre-advice failure.

Cedel employs financial risk management mechanisms, including its capitalization, insurance,⁵⁰ and committed credit facilities,⁵¹ that substantially reduce the risk of financial loss by participants and Cedel. Therefore, the Commission believes that Cedel's rules and procedures and the methods by which Cedel safeguards the financial security of its clearing

⁴² 15 U.S.C. 78q-1(b)(3)(A) and (F). Although Cedel does not have "rules" that would be subject to public comment and Commission review as contemplated by Section 19 of the Exchange Act for the purposes of governing the relationship between itself and its customers, Cedel does have various operating agreements which define the rights and responsibilities of Cedel and its customers.

⁴³ Clearing agencies should have an audit committee which selects or makes recommendations to the Board of Directors of the clearing agency regarding the selection of the clearing agency's external auditors. The Cedel audit committee, among other things, makes such recommendations to the Board of Directors and reviews the nature and scope of work to be performed by the external auditors and the results of such work.

⁴⁴ Managers are requested to respond to any irregularities within two weeks of receipt of the audit report. All responses must include an action plan. All unresolved audit items are regularly monitored by internal audit staff until they are closed and management is required to provide regular updates to internal audit on the progress of all open items.

⁴⁵ The IML exercised this authority in connection with the 1995 reorganization of Cedel Bank and its parent, Cedel International.

⁴⁶ Standards Release, *supra* note 39, 45 FR at 41925-26.

⁴⁷ In addition, Cedel's Credit Advisory Group, Strategic Advisory Group, and User Advisory Group advise the Cedel Board with specialized insight into Cedel's operations. The Credit Advisory Group provides information to the processing of new customers and the maintenance of appropriate credit standards and controls. The Strategic Advisory Group assists in developing corporate strategy and planning. The User Advisory Group provides feedback on Cedel services and customer ratification important to setting internal service priorities and assists in new product service and development.

⁴⁸ These financial statements are required to be provided to Cedel shareholders and customers pursuant to Luxembourg law. The Standards Release also states that unaudited quarterly financial statements should be made available to clearing agency participants upon request within thirty days following the close of each fiscal quarter. Cedel has represented to the Commission that under local custom it is uncommon for Luxembourg companies to prepare unaudited quarterly financial statements for distribution to shareholders. The Commission believes that because Cedel will be reporting to its customers according to local custom and otherwise satisfies the provisions of the Standards Release that Cedel substantially meets the requirements of the Exchange Act. Some foreign issuers are already relieved from certain Exchange Act requirements concerning the reporting of financial information. *Cf.* Exchange Act Rules 12g3-2 [17 CFR 240.12g3-2], 13a-16 [17 CFR 240.13a-16], 15d-16 [17 CFR 240.15d-16] and Form 6-K [17 CFR 249.306] (provisions which exempt certain foreign issuers from Exchange Act financial reporting requirements and instead permit such foreign issuers to provide financial and other information to the Commission in accordance with the local reporting requirements of their home domicile).

⁴⁹ *Supra* note 39, 45 FR at 41929.

⁵⁰ Cedel maintains over US \$400 million in insurance to cover all risks related to its operations and facilities.

⁵¹ *Supra*, note 10.

facilities and GCSS substantially satisfies the requirements of the Exchange Act.

2. Fair Representation

Section 17A(b)(3)(C) of the Exchange Act requires that the rules of a clearing agency provide for fair representation of the clearing agency's shareholders or members and participants in the selection of the clearing agency's directors and administration of the clearing agency's affairs. This section contemplates that users of a clearing agency have a significant voice in the direction of the affairs of the clearing agency.

Cedel is wholly-owned subsidiary of Cedel International which is a privately owned entity operated for the benefit of its shareholders. Cedel's Board of Directors is the same as the Board of Directors of Cedel International. Shares of Cedel International are held by Cedel customers and under the Cedel International by-laws no shareholder is permitted to own more than five percent of Cedel International stock. Cedel International shareholders elect Board members by casting one vote for each share held, and the ultimate composition of the Board must reflect each of the three major time zones serviced by Cedel.⁵² Accordingly, the Commission believes that the method in which Cedel's directors are selected and the methods utilized for customer participation adequately meets the requirements of fair representation under Section 17A(b)(3)(C) of the Exchange Act.

3. Participation Standards

Section 17A(b)(3)(B) of the Exchange Act enumerates certain categories of persons that a clearing agency's rules must authorize as potentially eligible for access to clearing agency membership and services. Section 17A(b)(4)(B) of the Exchange Act contemplates that a registered clearing agency have financial responsibility, operational capability, experience, and competency standards that are used to accept, deny, or condition participation of any participant or any category of participants enumerated in Section 17A(b)(3)(B), but that these criteria may not be used to unfairly discriminate among applicants or participants. In addition, the Exchange Act recognizes that a clearing agency may discriminate among persons in the admission to or the use of the clearing agency if such discrimination is based on standards of

⁵² According to Cedel's constituency policy for the Board of Directors, three directors must be selected from North America, seven from Europe, and three Asia.

financial responsibility, operational capability, experience, and competence.

Under its current admissions policy, Cedel will accept as customers financial institutions that are regulated in their home market by a financial regulatory authority. Such institutions include commercial and investment banks and broker-dealers, but do not include investment companies or insurance companies.⁵³ Cedel excludes investment companies and insurance companies because it believes that on an international level these entities are not subject to regulation comparable to banks or broker-dealers, and that there is great variance among nations. However, investment companies, insurance companies and other market participants are afforded an opportunity to participate in Cedel through accounts with banks, broker-dealers, or custodians that are Cedel customers. In addition, under the general terms and conditions applicable to its customers, Cedel reserves the right to deny services to any applicant without disclosing the reasons of such denial to the applicant.

Although Cedel's admissions policy is relatively inclusive, it would not meet the requirements of Section 17A(b)(3)(B) of the Exchange Act with regard to participants because the policy does not provide for membership by all of the enumerated categories of persons. Nevertheless because commercial and investment banks and broker dealers are eligible for Cedel membership and because Cedel has accepted a wide range of customers based upon its standards of financial responsibility, operational capability, experience, and competence, the Commission is satisfied that Cedel's participation standards are acceptable in light of Cedel's business and legal context.

4. Dues, Fees, and Charges

Sections 17A(b)(3) (D) and (E) of the Exchange Act provide for the equitable allocation of reasonable dues, fees, and other charges among clearing agency participants and prohibits a clearing agency from imposing or fixing prices for services rendered by its participants. Fees charged by Cedel are generally usage-based and are priced in a competitive environment with other entities that offer international clearance and settlement services. Cedel does not impose any schedule of prices or fix rates or other fees for services rendered by its customers. Accordingly, the Commission is satisfied that the method

⁵³ Specifically, under current admissions procedures Cedel would not accept as customers investment companies or insurance companies regulated by state or federal authorities in the United States.

by which Cedel provides for the equitable allocation of reasonable dues, fees, and other charges among its customers and its prohibitions regarding the fixing of prices of its customers substantially satisfies the Exchange Act requirements.

5. Capacity To Enforce Rules and To Discipline Participants

Section 17A(b)(3)(A) of the Exchange Act requires that a registered clearing agency be so arranged and have the capacity to enforce compliance by its participants with its rules. Furthermore, Sections 17A(b)(3) (G) and (H) require a registered clearing agency to have in place a system to discipline its participants for violations of its rules and that the procedures for applying such rules be fair and equitable.

Cedel is organized as a bank under the laws of Luxembourg and bilaterally contracts with each of its customers to provide clearance and settlement and other securities services. Cedel is not a self-regulatory organization within the meaning of the Exchange Act. In particular, Cedel does not have any disciplinary authority over its customers other than the commercial discipline of refusing to provide services to those customers that fail to satisfy the terms of their contractual arrangements with Cedel. Cedel contends that a self-regulatory structure as envisioned under the Exchange Act is incompatible with its current legal and business structure under Luxembourg law. Specifically, Cedel believes that it would be compelled to alter its clearance and settlement arrangements from its present bilateral contractual agreements with its customers and that such a change would upset and complicate the existing legal structure of international cross-border clearance and settlement of securities transactions. Moreover, Cedel believes any rules it would promulgate as a self-regulatory entity under U.S. law would have questionable application in the home markets of Cedel's international customers outside of the United States.⁵⁴

The Commission is sensitive to the myriad of issues which could arise in connection with requiring Cedel to comply with the self-regulatory structure and obligations of a registered clearing agency. Through its review of Cedel's operational arrangements with

⁵⁴ Cedel points out in its application that conflicts of law and international comity issues would likely arise in connection with Cedel's operations where U.S. legal and regulatory requirements differ from those of Luxembourg. This situation could undermine the certainty of Cedel's operational arrangements with both U.S. and non-U.S. customers.

its customers, the Commission is satisfied that the goals of Sections 17A(b)(3) (G) and (H) requiring registered clearing agencies to have in place a system to discipline its participants for violations of their rules are substantially fulfilled under Cedel's current structure and by grant of the exemption. For example, regarding the Exchange Act requirement that registered clearing agencies assure participant compliance with the clearing agencies' rules and procedures, Cedel has a strong financial incentive to have its customers adhere to Cedel's financial and operational requirements. Additionally, although Cedel does not have formal disciplinary authority over its customers, it can influence its customers' activities by its credit extension, admissions, and termination policies. Furthermore, if Cedel fails to assure adequate compliance by its customers with Cedel's financial and operational requirements or if Cedel or its customers operate in a way that endangers the safety and soundness of U.S. markets or market participants, the Commission can alter or withdraw Cedel's exemption. This is analogous to the Commission's authority to sanction registered clearing agencies for failure to assure compliance with rules of the clearing agencies.

6. Filing of Proposed Rule Changes

Section 19(b) of the Exchange Act requires registered clearing agencies to file with the Commission copies of all proposed amendments or additions to the clearing agencies' rules prior to implementation of such rule changes.⁵⁵ The Commission is vested with the authority to approve or disapprove such rule proposals in accordance with Section 19(b) of the Exchange Act, which includes a procedure to solicit public comment on proposed rule changes. Because Cedel will not be a registered clearing agency, proposed changes to its structure or operations will not be subject to the Section 19(b) process.

The relationship between Cedel and each of its customers is governed by the General Terms and Conditions Agreement ("Customer Agreement") and the Cedel Customer Handbook ("Customer Handbook"). Cedel must notify the customer in writing of any amendment to the Customer Agreement and the effective date of the amendment. Customers have the opportunity to object to the amendment in writing within ten business days of receipt of the notice of amendment. If a customer does not object in such a

manner, it is deemed to have accepted the amendment. Similarly, customers also are notified of changes to Cedel's Customer Handbook ten days prior to the effective date of such changes. Any objection to a change must be in writing within ten business days of the receipt of notice and must be brought to the attention of the Cedel User Group or customer support personnel.

While these procedures are not consistent with the requirements and obligations of registered clearing agencies as self-regulatory entities as set forth in the Standards Release and Section 17A of the Exchange Act, the self-regulatory role is not compatible with Cedel's current structure. In this context, however, the Commission believes that it is important that Cedel's customers receive notice of changes to the Customer Agreement and Customer Handbook, and are provided a procedure to respond to such changes. Also, as discussed below in Section III.C of this Order, Cedel will be required to provide the Commission with current copies of its Customer Handbook and Customer Agreement and to notify the Commission of any changes thereto.

C. Scope of Exemption

This Order exempts Cedel from registration as a clearing agency under Section 17A of the Exchange Act subject to conditions which the Commission believes are necessary and appropriate for Cedel's present structure and operation.⁵⁶ The Commission believes that such action is consistent with the Exchange Act objective of promoting the safety and soundness of the national clearance and settlement system, including the goals of fostering cooperating and coordination among persons engaged in the clearance and settlement of securities transactions, facilitating the prompt and accurate clearance and settlement of securities transactions, and protecting investors and the public interest. The limitations in the exemption reflect the Commission's determination to take a gradual approach toward permitting an international non-registered clearing agency such as Cedel to provide securities processing services in U.S. government securities to U.S. market participants. At the same time, the exemption permits Cedel to provide

clearance, settlement, and collateral management services to both U.S. and non-U.S. customers.

1. Securities Covered by the Exemption

In its application for exemption, Cedel requested that it be permitted to provide clearance and settlement, securities lending, and GCSS services for transactions involving all U.S. securities, including equity and debt securities.⁵⁷ As the comment letters generally indicated, the ability to provide clearance, settlement, and collateral management services for transactions involving U.S. Treasuries appears to be the most critical element of Cedel's proposed services, especially GCSS. In addition, at this time Cedel has linkages with U.S. entities necessary to provide services for transactions involving U.S. government securities, but has not yet developed the necessary linkages that would enable it to provide for clearance and settlement of all U.S. debt and equity securities.

Based on these considerations, this Order grants Cedel the authority to provide clearance, settlement, and collateral management services for (i) Fedwire-eligible U.S. government securities⁵⁸ and (ii) mortgage backed pass-through securities that are guaranteed by the Government National Mortgage Association ("GNMAs")⁵⁹ (collectively, "eligible U.S. government securities").⁶⁰ The Commission believes that this limitation is necessary and appropriate because it will facilitate operation of the GCSS system and

⁵⁷ The Commission is of the view that the provision of clearance, settlement, and collateral management services by a foreign clearing agency for U.S. entities in U.S. debt and equity securities raises issues that were not addressed sufficiently in the Cedel Notice. Consequently, commenters may not have focused on these issues. Therefore, the Commission today is publishing a notice relating to Cedel's original proposal to solicit comments on the specific issue as to the appropriate scope of an exemption to permit Cedel to offer its securities processing and collateral management services for U.S. debt and equity securities in addition to eligible U.S. government securities. Securities Exchange Act Release No. 38329 (February 24, 1997).

⁵⁸ "Government securities" is defined in Section 3(a)(42) of the Exchange Act, 15 U.S.C. 78c(a)(42). Fedwire is a large-value transfer system operated by the Federal Reserve Banks that supports the electronic transfer of funds and the electronic transfer of book-entry securities.

⁵⁹ GNMAs, unlike other mortgage-backed securities such as those guaranteed by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Association ("FHLMCs"), are issued in certificated form and therefore cannot be transferred over Fedwire.

⁶⁰ "Eligible U.S. government securities" also includes any collateralized mortgage obligation ("CMO") whose underlying securities are Fedwire eligible U.S. government securities or GNMA guaranteed mortgage-backed pass-through securities and which are depository eligible securities.

⁵⁶ Among other things, foreign sovereignty considerations may limit the Commission's ability to carry out all of its regulatory functions outside of the United States. Accordingly, the Commission notes that it does not possess the same degree of regulatory authority and control over an exempt non-domestic clearing agency such as Cedel as the Commission has with respect to a fully registered clearing agency.

⁵⁵ 15 U.S.C. 78s(b)(1).

permit Cedel to offer securities processing services for very liquid U.S. government securities, and will provide Cedel with the opportunity to request that the exemption be broadened when it develops the necessary linkages and facilities to provide securities processing services for other U.S. securities.

2. Volume Limits

The Commission is placing a limit on the volume of eligible U.S. government securities transacted by U.S. entities or their affiliates processed through Cedel. In the Cedel Notice, the Commission proposed that the exemption include a fixed volume limit of \$30 billion per day in U.S. securities transacted by U.S. entities or their affiliates processed through Cedel.⁶¹ However, based upon the comment letters and further examination of various methods of calculating transaction volume, the Commission has determined that a flexible percentage based formula is more appropriate.⁶²

Specifically, the average daily volume of eligible U.S. government securities processed through Cedel⁶³ may not

⁶¹ A similar approach was adopted by the Commission in granting an exemption from clearing agency registration to the Clearing Corporation for Options and Securities ("CCOS"). That exemptive order contained volume limitations of US\$6 billion net daily settlement for government securities and US\$24 billion for repurchase agreements and reverse repurchase agreements transactions calculated on an average daily basis over a 90 day period. At that time, the CCOS volume limits were designed to limit CCOS's activity to approximately 5% of the average daily dollar value of transactions in U.S. government securities and of repurchase agreements and reverse repurchase agreements involving U.S. government securities. See note 41 *supra*.

⁶² Two commenters addressed the proposed volume limitations. One commenter supported the initial conditions proposed by the Commission but urged that the Commission reassess from time to time the transaction volume limitations. The commenter believed that this would allow the Commission the opportunity to monitor the performance of Cedel while ensuring the appropriateness of the levels at which those limitations have been set. Letter from Monroe R. Sonnenborn, Managing Director, Morgan Stanley & Co. Incorporated, to Jonathan Katz, Secretary, Commission (July 22, 1996). The other commenter believed that the conditions relating to the volume limitations and Commission access to information to be "reasonable actions by the Commission for achieving its objective of monitoring the safety and soundness of U.S. securities markets." Letter from John Macfarlane, Managing Director, Salomon Brothers Inc. to Jonathan Katz, Secretary, Commission (July 19, 1996).

⁶³ For purposes of the determination of volume limits, securities "processed through Cedel" means a security that is utilized by GCSS, Cedel's clearance and settlement system, Cedel's tripartite repo service, or Cedel's securities lending program.

The conditions and restrictions set forth in this Order will not apply to Cedel for the processing of transactions in eligible U.S. government securities where both counterparties to the transaction are not a U.S. customer or an affiliate. However, from the

exceed five percent of the total average daily dollar value of the aggregate volume in eligible U.S. government securities. The total average daily dollar value of eligible U.S. government securities volume will be determined semi-annually as the sum of (1) the average daily transaction value of all Fedwire eligible book-entry transfers originated on Fedwire as provided to the Commission by the Board of Governors of the Federal Reserve System, (2) the average daily value of all compared trades, less the netted value of all such compared trades, in eligible U.S. government securities as provided to the Commission by the Government Securities Clearing Corporation, (3) the average daily value of all compared trades, less the netted value of all such compared trades, plus the average daily volume of all trade-for-trade transactions (*i.e.*, trades not included in the netting system), in eligible government securities as provided by MBS Clearing Corporation, (4) the average daily gross settlement value in eligible U.S. government securities as provided to the Commission by the Participants Trust Company, and (5) the average daily dollar value of compared trades in eligible U.S. government securities from any other source that the Division deems appropriate to reflect the aggregate volume in eligible U.S. government securities.

Cedel's average daily volume will be the sum of the following amounts for the previous twelve months as determined on a rolling quarterly basis: (1) All settlements, both internal and external, within Cedel's clearance and settlement system involving a U.S. customer or its affiliate and eligible U.S. government securities; (2) each movement of eligible U.S. government securities into the GCSS system involving a U.S. customer or its affiliate; (3) each delivery of eligible U.S. government securities involving a U.S. customer or its affiliate within the GCSS system; and (4) each delivery of eligible U.S. government securities involving a U.S. customer or its affiliate out of the GCSS system. In the volume calculation, only the initial movement of collateral (the "on-leg") of such GCSS delivery or movement will be included; the return of collateral will not.

For purposes of calculating the volume limit and for purposes of Commission access to information,

information to be made available to the Commission from Cedel and the IML, the Commission expects to receive information regarding all transactions in U.S. government securities processed by Cedel *i.e.*, whether or not a U.S. counterparty is involved) and will examine the effects such transactions may have on U.S. markets and U.S. market participants.

"affiliate" means any Cedel customer having a relationship with a U.S. entity,⁶⁴ where the U.S. entity has an arrangement on file at Cedel to prevent a settlement default or credit default in respect of such customer, or Cedel knows that the U.S. entity has another arrangement to prevent a settlement default or credit default with respect to such customer. In addition, the Commission may specifically designate Cedel customers that will be deemed affiliates for purposes of calculating Cedel's volume and for information access.

The Commission believes the volume limit is appropriate in that it is large enough to allow Cedel to conduct effective operations in processing eligible U.S. government securities transactions involving U.S. entities or their affiliates, and to allow the Commission to observe the effects of Cedel's activities on the U.S. government securities market, but is sufficiently limited so that the safety and soundness of the U.S. markets should not be materially affected if Cedel experiences financial or operational difficulties. Either upon Cedel's request or by its own initiative, the Commission may review whether the current volume limit should be modified.

3. Commission Access to Information

To facilitate the monitoring of the impact of Cedel's operation under this exemption, including compliance with the volume limit, this Order requires Cedel to provide information on a monthly basis regarding (i) the aggregate volume of eligible U.S. government securities transacted by U.S. entities or their affiliates that are processed through Cedel and (ii) the aggregate volume for all Cedel customers for transactions in eligible U.S. government securities that are processed through Cedel. Under the exemption, Cedel also is required to notify the Commission regarding material adverse changes in any account maintained by Cedel for its customers that are members or affiliates of members of a U.S. registered clearing agency.⁶⁵ Cedel also is required to

⁶⁴ For purposes of this Order, "U.S. entity" shall mean (i) any entity organized under the laws of the United States or any state or subdivision thereof that is registered or regulated pursuant to state or federal banking or securities law and shall include, without limitation, U.S. registered broker-dealers, U.S. banks (as defined by Section 3(a)(6) of the Exchange Act), and (ii) foreign branches of U.S. banks or U.S. registered broker-dealers.

⁶⁵ For purposes of the unilateral understanding with the IML discussed below, the term "material adverse changes" refers to a default in settlement for credit reasons in an account maintained by a Cedel member, a liquidation of collateral posted by

respond to a Commission request for information about a U.S. customer or its affiliate about whom the Commission has financial solvency concerns.⁶⁶ The exemption also is contingent upon the execution of a satisfactory unilateral understanding between the Commission and the IML, Luxembourg's banking and securities regulatory authority, to facilitate the provision of information by Cedel to the Commission.⁶⁷ In addition to the above information, the Commission will monitor Cedel through its review of information provided to the IML by Cedel⁶⁸ and its external auditors.⁶⁹

In addition to the foregoing arrangements for access to information, Cedel will be required to file with the Commission amendments to its application for exemption on Form CA-1 prior to the implementation of any change in Cedel's stated policies, practices, or procedures that makes the information contained in the original Form CA-1 incomplete or inaccurate in any material respect.⁷⁰ This method of notifying the Commission of proposed changes at Cedel will assist the Commission on its overall review and understanding of Cedel and its operations. In addition, Cedel will be required to notify the Commission of changes to the Customer Handbook and Customer Agreement and will provide the Commission with copies of the most current Customer Agreement and Customer Handbook and any amendments or updates thereto. Cedel also will provide the Commission with copies of Cedel's annual report of its external auditor, and any other document relating to an audit, survey, or consultant's review concerning Cedel's financial position, operations, or

internal control as the Commission may reasonably request.

4. Modification of Exemption

The Commission may modify by order the terms, scope, or conditions of Cedel's exemption from registration as a clearing agency if the Commission determines that such modification is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.⁷¹ Furthermore, the Commission may limit, suspend, or revoke this exemption if the Commission finds that Cedel has violated or is unable to comply with any of the provisions set forth in this Order if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act for the protection of investors and the public interest.

IV. Conclusion

The Commission finds that Cedel's application for exemption from registration as a clearing agency meets the standards and requirements deemed appropriate for such an exemption including those standards set forth under Section 17A of the Exchange Act.

It is therefore ordered, pursuant to Section 19(a)(1) of the Exchange Act, that the application for exemption from registration as a clearing agency filed by Cedel Bank, société anonyme (File No. 600-29) be, and hereby is, approved subject to the conditions contained in this Order.

By the Commission,
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 97-5027 Filed 2-27-97; 8:45 am]
BILLING CODE 8010-01-M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Social Security Administration publishes a list of information collection

⁷¹ The exemption provided by this Order is based upon representations by Cedel, facts contained in the Cedel application, and other information known to the Commission regarding the substantive aspects of Cedel's proposal (collectively, "representations and facts"). Any changes in the representations or facts as presented to the Commission may require a modification to the exemption. Responsibility for compliance with all applicable U.S. securities laws rests with Cedel and its customers, as appropriate. Cedel also is advised that this Order does not exempt Cedel from the anti-fraud or anti-manipulation provisions of the Exchange Act or any of the rules promulgated thereunder.

packages submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collections listed below have been submitted to OMB:

1. Physical Residual Functional Capacity Assessment; Mental Residual Functional Capacity Assessment—0960-0431. The information collected on forms SSA-4734-BK and SSA-4734 SUP is needed by the Social Security Administration to assist in the adjudication of disability claims involving physical and/or mental impairments. The forms assist the State Disability Determination Services (DDS) to evaluate impairment(s) by providing a standardized data collection format to present findings in a clear, concise and consistent manner. The respondents are State DDSs administering title II and title XVI disability programs.

Number of Responses: 1,693,425.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 564,475 hours.

2. Letter to Employer Requesting Wage Information—0960-0138. The information collected on form SSA-L4201 is used by the Social Security Administration to determine eligibility and proper payment for Supplemental Security Income (SSI) applicants/recipients. The respondents are employers of applicants for and recipients of SSI payments.

Number of Respondents: 133,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 66,500 hours.

3. State Agency Schedule for Equipment Purchases for SSA Disability Program—0960-0406. The information collected on form SSA-871 is used by the Social Security Administration to budget and account for expenditures of funds for equipment purchases by the State Disability Determination Services that administer the disability program. The respondents are State Disability Determination Services.

Number of Respondents: 54.

Frequency of Response: Annually.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 54 hours.

To receive a copy of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965-4125 or write to her at the address listed below. Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB

a Cedel member in an account maintained by Cedel, or a limitation imposed by Cedel on any credit line of a Cedel member relating to any account maintained by such member.

⁶⁶ In addition, the Commission will be permitted to observe Cedel operations and to talk to Cedel personnel on-site if the Commission so requests.

⁶⁷ Cedel has represented to the Commission that its obligations to provide information to the Commission pursuant to this Order is not dependent upon the prior approval of the IML.

⁶⁸ Cedel is required to submit to the IML monthly balance sheets, foreign exchange position reports, and liquidity ratios. Cedel also is required to submit quarterly income statements and reports on large exposures and on the maturity structure of Cedel's assets and liabilities. See also *supra* note 1.

⁶⁹ Cedel's external auditors are required, among other things, to review Cedel's accounting and risk management systems and to assess the reliability of Cedel's periodic reports to the IML.

⁷⁰ Cedel will be required to amend its application for any proposed changes to its stated policies, practices, or interpretations as that phrase is defined in Rule 19b-4, 17 CFR 240.19b-4.