

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 9, 2025.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:**Table of Contents**

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I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). The Public

Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. See 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)-(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests. The comment due date discussed below does not apply to Section III proceedings (Docket Nos. MC2026-124 and K2026-124; MC2026-125 and K2026-125).

II. Public Proceeding(s)

1. *Docket No(s):* MC2026-122 and K2026-122; *Filing Title:* USPS Request to Add Priority Mail Contract 949 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 1, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* December 9, 2025.

2. *Docket No(s):* MC2026-123 and K2026-123; *Filing Title:* USPS Request to Add Priority Mail Contract 950 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 1, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Samuel Robinson; *Comments Due:* December 9, 2025.

III. Summary Proceeding(s)

1. *Docket No(s):* MC2026-124 and K2026-124; *Filing Title:* USPS Request to Add New Fulfillment Standardized Distinct Product, PM-GA Contract 934, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 1, 2025; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

2. *Docket No(s):* MC2026-125 and K2026-125; *Filing Title:* USPS Request to Add New Fulfillment Standardized Distinct Product, PM-GA Contract 935, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 1, 2025; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2025-21937 Filed 12-3-25; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104281; File No. 600-44]

CME Securities Clearing, Inc.; Order Granting an Application for Registration as a Clearing Agency Under Section 17A of the Securities Exchange Act of 1934

December 1, 2025.

I. Introduction

On December 13, 2024, CME Securities Clearing, Inc. ("CMESC") filed with the Securities and Exchange Commission ("Commission") an application on Form CA-1 ("Application") under Section 17A of the Securities Exchange Act of 1934 ("Exchange Act") seeking to register as a clearing agency to provide central counterparty ("CCP") services for transactions involving U.S. Treasury securities.¹ Notice of the Application was published for comment in the **Federal Register** on January 22, 2025.²

¹ 15 U.S.C. 78q-1. If CMESC determines in the future to provide other clearing agency services or to perform the functions of a clearing agency for transactions in other types of securities, CMESC would need to amend its application on Form CA-1 to so reflect and submit any related proposed rule changes as required under Section 19(b) of the Exchange Act.

² Release No. 34-102200 (Jan. 15, 2025), 90 FR 7713 (Jan. 22, 2025). Non-confidential aspects of the Application, including any exhibits thereto cited in this order, are available on the Commission's website at: <https://www.sec.gov/rules-regulations/other-commission-orders-notices-information/cme-form-ca-1>.

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

On April 18, 2025, the Commission instituted proceedings pursuant to Section 19(a)(1)(B) of the Exchange Act to determine whether to grant or deny the Application.³ On July 21, 2025, the Commission designated a longer period for Commission action on the OIP.⁴ On September 30, 2025, CMESC agreed to extend the time for the Commission's review of the Application.

The Commission received comment letters on the notice of the Application and on the OIP, as well as response letters from CMESC.⁵ Each comment letter either expressed explicit support for approval of the Application or generally expressed support for the expansion of access to the clearing of transactions in U.S. Treasury securities through the approval of new clearing agencies. Some commenters also recommended that CMESC consider certain changes to the Application. The comment letters received, and CMESC's response letters thereto, are discussed in Part III.

This order grants CMESC's Application for registration as a clearing agency for the reasons set forth in Part III below.

II. Statutory Standard for Registration as a Clearing Agency

Clearing agencies are broadly defined under the Exchange Act and undertake a variety of functions,⁶ including providing the services of a CCP.⁷ Pursuant to Section 17A of the Exchange Act and Rule 17Ab2-1 thereunder, an entity that meets the definition of a clearing agency must register with the Commission (or obtain from the Commission an exemption from registration prior to performing the

functions of a clearing agency).⁸ In addition to the requirements set forth in Rule 17Ab2-1, Section 19(a)(1) of the Exchange Act establishes the standard for Commission review of an application for registration as a clearing agency. Pursuant thereto, the Commission shall grant registration of a clearing agency if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to the applicant are satisfied.⁹ The Commission shall deny such registration if it does not make such finding.¹⁰

The requirements of the Exchange Act applicable to clearing agencies are set forth in Section 17A of the Exchange Act and the rules and regulations thereunder.¹¹ Accordingly, to grant CMESC's application for registration as a clearing agency, the Commission must find that the Application satisfies the requirements of Section 17A(b) of the Exchange Act and rules and regulations thereunder, including the determinations set forth in paragraphs (A) through (I) of Section 17A(b)(3) of the Exchange Act.¹²

After a clearing agency's application for registration is granted, the clearing agency must continue to satisfy the requirements of the Exchange Act and the rules and regulations thereunder. The Commission has explained that "[a]n approval of clearing agency registration does not mean that no further modifications of the applicant's rules, systems, procedures, or practices are needed."¹³ Rather, the Commission stated that a registered clearing agency's obligation to continue to satisfy the requirements of the Exchange Act and the rules and regulations thereunder

means that "[t]he self-regulatory obligations of [a] fully registered clearing agenc[y] cannot end" after registration.¹⁴ To ensure such compliance, the Commission stated that it "will continue to use its oversight, inspection, and enforcement authority as necessary and appropriate to further the purposes of the [Exchange] Act."¹⁵

III. Review of Application Under Statutory Standard for Registration

Consistent with the requirements in Sections 17A and 19(a)(1) of the Exchange Act described above, the Commission below discusses how the Application satisfies each of the statutory requirements to be registered as a clearing agency.¹⁶

A. Organization and Capacity

1. Statutory Standard: Section 17A(b)(3)(A)

Section 17A(b)(3)(A) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that such clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of the Exchange Act and the rules and regulations thereunder, to enforce (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of the Exchange Act) compliance by its participants with the rules of the clearing agency, and to carry out the purposes of Section 17A of the Exchange Act.¹⁷

Consistent with this standard, the Commission does not assess in this order whether CMESC's ultimate implementation of the rules, policies, and procedures set forth in its Application will comply with each of the Commission's rules for clearing agencies, as CMESC is not yet operating

³ Release No. 34-102889 (Apr. 18, 2025), 90 FR 17269 (Apr. 24, 2025) ("OIP").

⁴ Release No. 34-103514 (July 21, 2025), 90 FR 34938 (July 24, 2025).

⁵ The public comment file for the Application is available on the Commission's website at: <https://www.sec.gov/comments/600-44/600-44.htm>. On May 27, 2025, CME Group submitted two letters in one set, and both letters are included as part of the one entry reflected on the Commission's website. See letters from Jonathan Marcus, Senior Managing Director and General Counsel, CME Group, Inc., dated May 27, 2025 ("CME Response Letter" and "CME Fees Letter"). The CME Response Letter addresses the comment letters received on the Application, and the CME Fees Letter describes CMESC's intent with respect to its fee schedule.

⁶ 15 U.S.C. 78c(a)(23)(A) (providing the definition of "clearing agency"); see also Release No. 34-78961 (Sept. 28, 2016), 81 FR 70786, 70897 (Oct 13, 2016) ("CCA Standards Adopting Release") (stating that clearing agencies are broadly defined in the Exchange Act and undertake a variety of functions).

⁷ See 17 CFR 240.17ad-22(a)(2) (defining "central counterparty" as a clearing agency that interposes itself between counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer).

⁸ 15 U.S.C. 78q-1(b); 17 CFR 240.17ab2-1 ("Rule 17Ab2-1").

⁹ 15 U.S.C. 78q-1; 15 U.S.C. 78s(a)(1).

¹⁰ 15 U.S.C. 78s(a)(1).

¹¹ Rules for registered clearing agencies include recordkeeping requirements, 17 CFR 240.17a-1; the filing process for proposed rule changes, 17 CFR 240.19b-4; rules addressing operations and risk management, governance and conflicts of interest, and plans for recovery and wind-down at, respectively, 17 CFR 240.17ad-22 ("Rule 17Ad-22"), 240.17ad-25 ("Rule 17Ad-25"), and 240.17ad-26 ("Rule 17Ad-26"); and the requirements set forth in Regulation Systems Compliance and Integrity, 17 CFR 242.1000 *et seq.* ("Regulation SCI"). The Commission conducts ongoing monitoring of registered clearing agencies through its supervisory program for registered clearing agencies. The Commission also assesses compliance with Commission rules by conducting examinations and investigations. See 15 U.S.C. 78q(b); 15 U.S.C. 78u(a).

¹² 15 U.S.C. 78s(a); 15 U.S.C. 78q-1(b)(3)(A)-(I). The determinations are described further below.

¹³ See Release No. 34-69838 (June 24, 2013), 78 FR 39027, 39029 (June 28, 2013) ("FICC Registration") (approving an application by the Fixed Income Clearing Corporation ("FICC") for permanent registration as a clearing agency).

¹⁴ See Release No. 34-20221 (Sept. 23, 1983), 48 FR 45167, 45171 (Oct. 3, 1983) (approving nine applications for permanent registration as a clearing agency).

¹⁵ *Id.*

¹⁶ See 15 U.S.C. 78q-1(b)(3)(A)-(I) (describing the statutory determinations that the Commission must make regarding the rules and structure of a clearing agency to grant registration). In 1980, the Commission published a statement of the views and positions of Commission staff regarding the requirements of Section 17A. See Release No. 34-16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

¹⁷ 15 U.S.C. 78q-1(b)(3)(A).

as a clearing agency.¹⁸ Rather, the Commission assesses whether CMESC is *so organized and has the capacity to comply* with the provisions of the Exchange Act and the rules and regulations thereunder,¹⁹ by analyzing CMESC's organization and governance, as well as its operational arrangements.²⁰ Under this standard, the registration of a clearing agency "depends on a prediction about compliance with the law."²¹ Section 17A assumes that "an applicant would produce a business plan that, if faithfully executed, would comply" with the Exchange Act.²² To make its required statutory determination under Section 17A(b)(3)(A), the Commission must "find[] that the applicant is *able and likely* to comply," and upon registration and commencement of operations as a registered clearing agency, compliance with Section 17A(b)(3)(A) "is likely to be carried out."²³

In the OIP, the Commission requested public comment on whether CMESC is so organized and has the capacity to facilitate prompt and accurate clearance and settlement, and in particular, whether CMESC's proposed legal, governance, and operational arrangements enable CMESC to satisfy the requirements of the Exchange Act and Commission rules and regulations

¹⁸ See *supra* notes 13–14 and accompanying text (explaining that approval of clearing agency registration does not mean that no further modifications of the applicant's rules, systems, procedures, or practices are needed and that the obligations of a fully registered clearing agency cannot end after registration).

¹⁹ With respect to CMESC's ability to safeguard securities and funds for which it is responsible, the Commission addresses that topic in Part III.E, in conjunction with discussing Section 17A(b)(3)(F) of the Exchange Act, which requires, among other things, that the rules of the clearing agency are designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. With respect to CMESC's ability to enforce compliance by its participants with the rules of the clearing agency, the Commission addresses that topic in Part III.F, in conjunction with discussing Section 17A(b)(3)(G) of the Exchange Act, which requires that the rules of the clearing agency provide that its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency.

²⁰ In Part III.E, the Commission further analyzes CMESC's capacity to conduct risk management consistent with the statutory requirements for safeguarding securities and funds set forth in Section 17A(b)(3)(F) of the Exchange Act.

²¹ *Bd. of Trade of City of Chicago v. SEC.*, 883 F.2d 525, 533 (7th Cir. 1989) (vacating Delta Government Options Corporation ("Delta")'s temporary registration as a clearing agency and remanding to the Commission to decide whether Delta's proprietary trading system would operate as an unregistered national securities exchange in violation of Sections 5 and 6 of the Exchange Act).

²² *Id.* at 533–34.

²³ *Id.* at 534 (emphasis in original).

thereunder.²⁴ The comment letters submitted in response to the OIP stated that the Application meets the Commission's standards for registration as a clearing agency under the Exchange Act.²⁵

2. Summary of Proposed Operations

The following is an overview of CMESC's proposed clearing agency operations. In Exhibit J, CMESC describes that its risk management framework has been designed to identify, measure, monitor, and manage a range of risks that arise through its clearance and settlement functions in order to promote prompt clearance and settlement of securities transactions, and the safeguarding of securities and funds against operational risk losses. For example, CMESC will have a process to manage trade submissions in real-time, and allow for communication of trade submissions, settlement confirmation and failures, and transfers.²⁶ Trade processing will be executed in near real-time, and CMESC's operations system will allow for ongoing monitoring of exposures of positions.

(a) Types of Transactions Accepted for Clearing

As described in Exhibit J, CMESC will accept three types of transactions for clearing: tri-party Clear to Hold Transactions, Clear to Deliver Transactions, and Cash Treasury

²⁴ See OIP, *supra* note 3, 90 FR at 17271. In response to the Notice, some commenters also requested that CMESC obtain legal opinions relating to certain aspects of CMESC's margin framework. See letter from William C. Thum and Robert Toomey, SIFMA and SIFMA Asset Management Group, dated Mar. 10, 2025 ("SIFMA & AMG I"), at 4; letter from Allison Lurton, General Counsel and Chief Legal Officer, FIA, dated Mar. 10, 2025 ("FIA"), at 4. Legal opinions can help a clearing agency address questions about the legal foundation for its proposed activities, which can help to ensure a clearing agency is so organized and has the capacity to facilitate prompt and accurate clearance and settlement. Because the comments were directed to legal opinions for its margin framework, the Commission has addressed these comments in the context of safeguarding securities and funds under Section 17A(b)(3)(F), which is discussed in Part III.E.

²⁵ See letter from William C. Thum and Robert Toomey, SIFMA and SIFMA Asset Management Group, dated May 15, 2025 ("SIFMA & AMG II"), at 2 ("We believe that CMESC's application meets the Commission's standards for registration as a clearing agency under Section 17A of the Securities Exchange Act of 1934"); letter from Katherine Darras, General Counsel, International Swaps and Derivatives Association, dated May 15, 2025 ("ISDA II"), at 1–2 ("Upon review, we further believe that CMESC's application meets the Commission's standards for registration as a clearing agency under Section 17A of the Securities Exchange Act of 1934").

²⁶ See Exhibit J of the Application, at 9.

Transactions.²⁷ For tri-party Clear to Hold Transactions, Members and Users will submit executed transactions to the Securities Settlement Bank system, as is current market practice. This Securities Settlement Bank will then submit the transaction to CMESC for clearing using a SWIFT-based transaction submission API. For Clear to Deliver Transactions and Cash Treasury Transactions, Members and Users may submit executed transactions to CMESC (1) as matched transactions from an Eligible Platform, (2) as single-sided transactions to be matched in CMESC's clearing system, or (3) a Member or User may enter and allege a transaction to another Member or User to claim or decline using CMESC's user interface. All transactions executed from an Eligible Platform will be sent to CMESC using a FIXML-based trade submission API. Single-sided transactions may be submitted via direct entry into the clearing system's user interface or from an external messaging platform with the matching to be performed by CMESC. Single-sided trades will be matched by CMESC when the required relevant attributes submitted to CMESC by both parties for each transaction correspond. Members and Users will hold the option to cancel a single-sided trade submitted prior to novation and may affirm or decline trades that have been alleged to that Member or User. Pre-matched transactions (*i.e.*, transactions matched at an Eligible Platform prior to submission to CMESC) will be received by CMESC as matched trades and cannot be rejected or canceled by any party other than CMESC. CMESC will send a reject message for any transactions that do not follow CMESC's specifications (*e.g.*, messaging specifications or product eligibility). Members and Users may correct any transaction messages rejected for invalid FIXML specifications and resubmit the transaction for clearing. Members and Users will be notified with a message anytime the status of their transaction changes. Any pending, unmatched single-sided transactions will be rejected by CMESC at the end of the Business Day. Following novation, any cancellation or amendment of a submitted transaction will require the involvement of CMESC. Canceled trades between participants, whether Members or Users, may be modified and resubmitted.²⁸

²⁷ Capitalized terms not defined in this order are defined in the Application.

²⁸ See Exhibit J of the Application, at 10.

(b) Novation

According to Exhibit J, upon submission of a pre-matched or a successful full match of a transaction request, CMESC will validate the transaction, account level details, and Member limits placed on a particular Member or User.²⁹ Following successful validations, the trade will be novated and CMESC will become the buyer to each seller and the seller to each buyer (*i.e.*, the CCP) for each transaction. CMESC will determine whether to novate a matched transaction submitted for clearing. As described by CMESC, the novation determination will be the same irrespective of whether the transaction is matched prior to submission to CMESC or is matched by CMESC. CMESC will perform a product validation, account validation, and credit control check on each submitted trade prior to novation. Any transactions not novated by the deadlines specified by CMESC will be rejected from clearing, and Members and Users may resubmit these transactions for the next eligible clearing date.³⁰

(c) Settlement Process

Members and Users will be responsible to CMESC to settle their trade exposures, post margin and pay Outstanding Exposure Settlement (“OES”) obligations.³¹ Clear to Deliver Transaction, Clear to Hold Transaction, and Cash Treasury Transaction settlements will follow existing market practices. During each clearing cycle, CMESC will mark to market all open transactions and will compute margin and settlement variation (*i.e.*, a component of the OES) requirements for Members and Users.³² Regarding margin, CMESC will compare the calculated margin requirement against margin collateral held by CMESC for the relevant Account and will issue a margin call for any deficiency that must be met in U.S. Dollar cash. CMESC will also facilitate the exchange of settlement variation among Members and Users during each clearing cycle and settlement variation requirements will be collected in U.S. Dollar cash. Members and Users will be able to view the status of a transaction and their settlement obligations through the clearing system user interface trade blotter or through reports generated by

CMESC. Members and Users may substitute cash held for initial margin with other permissible non-cash collateral prior to the deadline. Reports provided to all Members and Users will include, but are not limited to, trade register, coupon report, margin report, and settlement obligation report.³³

In Exhibit J, CMESC describes its ability to settle transactions on trade date, or “T+0.” As described in Exhibit J, to reduce settlement risk, Repo Transactions that settle on T+0 will be settled in real-time on a gross basis. Separately, for Members and Users, Cash Treasury Transactions and Repo Transactions that settle on the day after trade date (or a “T+1” basis) and have identical CUSIPs will be settled on a net basis. For Clear to Deliver Transactions and Cash Treasury Transactions, settlement obligations of cash outright and repo transactions at the CUSIP level with the same settlement date will be netted by CMESC. Net settlement of next day (T+1) cash outright and repo transactions will occur at CMESC’s end-of-day settlement price.³⁴ With respect to Clear to Hold Transactions, netting will only occur against additional Clear to Hold transactions in the same General Collateral Bucket with the same scheduled settlement date. Such transactions will not net against either Cash Treasury Transactions or Clear to Deliver Transactions.³⁵

(d) Approach to Settlement Fails

Exhibit J describes the steps CMESC will follow in the case of a settlement fail. For example, with respect both to Clear to Deliver Transactions and Clear to Hold Transactions, when Members and Users fail to deliver securities on the Start Leg of a transaction, CMESC will: (i) allocate the fail to one or more Member(s) or User(s) that are entitled to receive the same Eligible Securities (for Clear to Deliver Transactions) or allocate the fail to one or more Member(s) or User(s) that are entitled to receive the securities in the same General Collateral Bucket (for Clear to Hold Transactions) that the failing Member or User was obligated to deliver; (ii) assess against the failing Member or User the repo rate based on the full delivery obligation; and (iii) assess against the failing Member or User a fail charge as determined by CMESC for each day that such Member or User fails to deliver the Eligible Securities.³⁶ CMESC will pay any amounts collected pro rata to the

Member(s) or User(s) to which CMESC allocates the fail. If a Member or User partially satisfies its obligation to deliver securities to CMESC on the Start Leg of a transaction, the Member or User will receive cash equal to the value of the securities it delivered, subject to the conditions set out in the Rules.³⁷ In a Clear to Hold Transaction, a failure to deliver securities may be corrected if: (1) the original parties to the transaction agree to modify the transaction to reflect the amount of securities delivered; or (2) the Member or User that failed to deliver the securities will provide cash (instead of securities) as collateral to fully satisfy its delivery obligation. In a Clear to Deliver Transaction, a failure to deliver securities may be corrected if the original parties to the transaction agree to modify the transaction to reflect the amount of securities actually delivered. CMESC may buy-in a Member or User that has failed to deliver securities on the Start Leg of a transaction. After CMESC purchases the securities, the fail-to-deliver will be extinguished, and, if the buy-in price is less than the repurchase price, CMESC will pay the difference to the failing Member or User. Conversely, if the buy-in price exceeds the repurchase price, the failing Member or User must pay the difference to CMESC. Additionally, a Member or User to whom a fail has been allocated may submit a buy-in request to CMESC not earlier than one day after such allocation has been made, and the Member or User may effect the buy-in with CMESC’s approval. Alternatively, instead of effecting a buy-in, a Member or User to whom a fail has been allocated may effect a cash settlement with CMESC’s approval.³⁸

(e) Default Management

When a Member or User fails to deliver securities on the Off Leg of a transaction, CMESC will allocate the fail to one or more Member(s) or User(s) that are entitled to receive the same Eligible Securities that the failing Member or User was obligated to deliver, and CMESC may assess against the failing Member or User a fail charge as determined by CMESC for each day that such Member or User fails to deliver the Eligible Securities. CMESC will pay the collected fail charges pro rata to the Member(s) or User(s) to which CMESC allocates the fail.³⁹ If a Member or User partially satisfies its obligation to deliver securities on the Off Leg of a

²⁹ See Exhibit J of the Application, at 11.

³⁰ See *id.*

³¹ The Commission further discusses CMESC’s risk management practices in Part III.E, in the context of the statutory standard regarding rules for the safeguarding of funds and securities in Section 17A(b)(3)(F) of the Exchange Act.

³² See Exhibit J of the Application, at 12.

³³ See *id.*

³⁴ See Exhibit J of the Application, at 14–15.

³⁵ See *id.*

³⁶ See Exhibit J of the Application, at 12–13.

³⁷ See CMESC Rules, at Rule 1506(g).

³⁸ See Exhibit J of the Application, at 12–13; see also CMESC Procedures, at Procedure 15–10 (describing the process for buy-ins).

³⁹ See Exhibit J of the Application, at 13.

transaction, the Member or User will receive cash equal to the value of the securities it delivered, subject to the conditions set out in the Rules. A Member or User cannot fail to deliver securities on the Off Leg in Clear to Hold Transactions because the securities will be held by the Securities Settlement Bank. CMESC may buy in a Member or User that has failed to deliver securities to CMESC on the Off Leg of a transaction. After CMESC purchases the securities, the fail-to-deliver will be extinguished, and, if the buy-in price is less than the repurchase price, CMESC will pay the difference to the failing Member or User. Conversely, if the buy-in price exceeds the repurchase price, the failing Member or User must pay the difference to CMESC. Additionally, a Member or User to whom a fail has been allocated may submit a buy-in request to CMESC not earlier than one day after such allocation has been made, and the Member or User may effect the buy-in with CMESC's approval. Alternatively, instead of effecting a buy-in, a Member or User to whom a fail has been allocated may effect a cash settlement with CMESC's approval.⁴⁰

As described in Exhibit J, failure to deliver cash in a Clear to Deliver Transaction or Clear to Hold Transaction may be considered a Default.⁴¹ Where CMESC declares an event of Default or ceases to act for a Member or User, CMESC may take default management (including liquidity management) actions permitted under its Rules. Where a Member or User fails to deliver cash on the Start Leg, CMESC may permit parties to mutually agree to modify the size of the transaction in order to correct the failure to deliver.⁴² With respect to Cash Treasury Transactions, when a Member or User fails to deliver securities on the settlement day of a transaction, CMESC will: (i) allocate the fail to one or more Member(s) or User(s) that are entitled to receive the same Eligible Securities; and (ii) assess against the failing Member or User a fail charge as determined by CMESC for each day that such Member or User fails to deliver the Eligible Securities. CMESC will pay any amounts collected to the Member(s) or User(s) to which CMESC allocates the

fail. If a Member or User partially satisfies its obligation to deliver securities to CMESC, the Member or User will receive cash equal to the value of the securities it delivered, subject to the conditions set out in the Rules. CMESC may buy in a Member or User that has failed to deliver securities to CMESC. After CMESC purchases the securities, the fail-to-deliver will be extinguished, and, if the buy-in price is less than the repurchase price, CMESC will pay the difference to the failing Member or User. Conversely, if the buy-in price exceeds the repurchase price, the failing Member or User must pay the difference to CMESC. Additionally, a Member or User to whom a fail has been allocated may submit a buy-in request to CMESC not earlier than one day after such allocation has been made, and the Member or User may effect the buy-in with CMESC's approval. Alternatively, instead of effecting a buy-in, a Member or User to whom a fail has been allocated may effect a cash settlement with CMESC's approval.⁴³

(f) Business Continuity Practices

In Exhibit K, CMESC describes its business continuity practices. CMESC's information technology infrastructure will be made up of SCI Critical Systems that will be hosted in a virtual private cloud ("VPC") environment and in physical datacenters.⁴⁴ One instance of each of the physically hosted systems will be deployed to a primary data center. Backups for the physically hosted systems will be available in another, geographically disparate datacenter. VPC environment backup systems will also be in geographically disparate locations. Another geographically disparate location will house disaster recovery infrastructure and servers hosting backup data from both the VPC environment and the physical datacenter servers.⁴⁵

In addition, as described in Exhibit M, CMESC has Business Continuity Management and disaster recovery requirements that are governed by CMESC's Operational Resilience Program Policy. CMESC's infrastructure and systems are built around a multi-layered approach to resilience and redundancy. If for any reason one of its database server instances becomes unstable or unavailable, systems are architected to create a new instance. If a datacenter becomes unavailable for any reason, systems are architected to automatically redirect all instances that were operating in that datacenter to

another available datacenter. These actions are designed to occur within the production environment and are independent of the disaster recovery instance infrastructure.⁴⁶

3. Organization, Governance, and Analysis

CMESC is a Delaware corporation, which is wholly owned by its parent company, CME Group, Inc., itself a Delaware corporation.⁴⁷ Under this structure, CMESC's parent company—which also operates as its primary service provider in the provision of its services as a registered clearing agency—serves as its sole shareholder.⁴⁸ Per Exhibit E-2B, CMESC will be managed by a Board of Directors ("Board") consisting of nine directors,⁴⁹ along with specialized committees of the Board, to include an Audit Committee,⁵⁰ a Regulatory Oversight Committee,⁵¹ a Nominating Committee,⁵² and a Risk Management Committee.⁵³ Each board committee has a written charter that lays out the membership structure and responsibilities of that committee.⁵⁴ According to CMESC, the person who will act on behalf of its sole shareholder, CME Group, Inc., will be one of CME Group, Inc.'s authorized officers.

With respect to organization and governance, CMESC's Application demonstrates that it is a corporation in good standing in the State of Delaware.⁵⁵ As described above and in Exhibit A of the Application, CMESC's Board of Directors, executives, and sole shareholder are the persons who will direct the management and policies of CMESC.⁵⁶ In addition, per Exhibit E-2B,

⁴⁶ See Exhibit M of the Application.

⁴⁷ See Exhibit C-1 of the Application.

⁴⁸ See Exhibit A of the Application, at 1 (stating that CME Group Inc. is CMESC's "direct sole shareholder"); see also Exhibit C of the Application (stating that CMESC "is a wholly-owned subsidiary of" CME Group, Inc.).

⁴⁹ See Exhibit E-2B of the Application, at 1 (CMESC Board of Directors Charter, Sections I ("Purpose") and II ("Board Composition")).

⁵⁰ See Exhibit E-2E of the Application, at 1, 2-6 (CMESC Audit Committee Charter, Sections I ("Purpose") and IV ("Audit Committee Meetings, Tasks and Authority")).

⁵¹ See Exhibit E-2F of the Application at 1, 2-3 (CMESC Regulatory Oversight Committee Charter, Sections I ("Purpose") and IV ("ROC Meetings, Tasks and Authority")).

⁵² See Exhibit E-2D of the Application, at 1, 2-5 (CMESC Nominating Committee Charter, Sections I ("Purpose") and IV ("Nominating Committee Meetings, Tasks and Authority")).

⁵³ See Exhibit E-2C of the Application at 1, 2-4 (CMESC Risk Management Committee Charter, Sections I ("Purpose") and IV ("CSRMC Meetings, Tasks and Authority")).

⁵⁴ See *supra* notes 50-53.

⁵⁵ See *supra* note 47.

⁵⁶ See *supra* notes 48-53 and accompanying text; Exhibit A of the Application, at 1 (stating that "the

⁴⁰ See *id.*

⁴¹ See *id.* The Commission further discusses CMESC's default management procedures in Part III.E, in the context of the statutory standard regarding rules for the safeguarding of funds and securities in Section 17A(b)(3)(F) of the Exchange Act.

⁴² See CMESC Rules, at Rule 1503(d); see also CMESC Procedures, at Procedure 15-8 (describing the process to modify the transaction).

⁴³ See Exhibit J of the Application, at 13.

⁴⁴ See Exhibit K of the Application, at 1.

⁴⁵ See Exhibit K of the Application, at 1-2.

the Application sets forth that CMESC has a written board charter establishing the purpose, composition, chair selection, term, director election, vacancy, removal and resignation, meetings, committees, succession procedures, confidentiality, and conflicts of interest expectations for the Board. These charters are extensive, detailed, and provide for delineation of roles and responsibilities among the Board, executives, and the sole shareholder. Per Exhibits E–2C, E–2D, E–2E, and E–2F, CMESC also has written charters for each board committee, which include provisions for each board committee addressed to purpose, membership, meeting schedule, tasks, authority, responsibilities, reporting structure, confidentiality, and conflicts of interest. Such delineation of roles and responsibilities of Board committee members is one way the Application demonstrates that CMESC meets the statutory standard in Section 17A(b)(3)(A).⁵⁷ Where appropriate, such charters also establish composition requirements for a majority of independent directors, consistent with the Commission's rules for clearing agency governance.⁵⁸ The Board committees have distinguishable areas of focus and are designed to operate within the larger corporate framework, which is another way the Application demonstrates that CMESC meets the statutory standard in Section 17A(b)(3)(A) and would comply with the Exchange Act and rules and regulations thereunder.⁵⁹

Under Exhibit E–2A(2), either the sole shareholder or the CMESC Board of Directors can amend the corporation's bylaws and board charters. This presents the Board and the shareholder with concurrent ability to revise how the corporation operates, even if CMESC's board and its sole shareholder—its parent company—are likely to have aligned views. Ultimately, to the extent CMESC seeks to revise its bylaws and charters to address the potentially overlapping authorities of the Board and the shareholder (or to revise its bylaws and charters for any other reason), such revisions are required to be filed with the

following persons will control or direct the management and policies" of CMESC: (i) its direct sole shareholder (CME Group, Inc.); (ii) its Board of Directors; (iii) its Audit Committee; (iv) its Risk Management Committee; (v) its Regulatory Oversight Committee; and (vi) its executives).

⁵⁷ See *id.*

⁵⁸ See, e.g., 17 CFR 240.17ad–25(b), (c), (d), (e).

⁵⁹ See *supra* note 11 (summarizing the Commission rules applicable to registered clearing agencies).

Commission as proposed rule changes pursuant to Section 19(b) of the Exchange Act and rules thereunder, including Rule 19b–4, and the Commission will review any such changes for consistency with the Exchange Act and the rules and regulations thereunder.⁶⁰

CMESC's governance arrangements include a process for classifying certain directors as independent. In most cases, the Nominating Committee, which consists of a majority of independent directors,⁶¹ will make the initial and ongoing determination of director independence; however, some exceptions apply. Per Section II of Exhibit E–2D, an independent director of the Nominating Committee can be removed prior to the end of the term if a majority of the Board of Directors determines that such person no longer qualifies as independent, which could cause the Nominating Committee to be composed of less than a majority of independent directors.⁶² Additionally, Section IV of Exhibit E–2D refers to the Board's ability to reclassify a non-independent director as independent, and directs the Nominating Committee to confirm the Board's decision under Section II of Exhibit E–2B (the Board of Directors Charter). More specifically, this Section II states that if CMESC identifies a potential impairment of the categorization of a director as an independent director, or an independent director reports to the Secretary of the Board a new material relationship or a change, the Secretary shall make an applicable report to the Nominating Committee, and the Nominating Committee shall be responsible for determining the classification of the director as an independent director. Section II of Exhibit E–2B also states that a non-Independent Director may be reclassified as an Independent Director and requires that the Nominating Committee determine whether such reclassification is appropriate. Therefore, in some cases, the Board of Directors makes its own determination of director independence, and then it

⁶⁰ See 15 U.S.C. 78s(b); 17 CFR 240.19b–4.

⁶¹ See Exhibit E–2D of the Application, *see also* 17 CFR 240.17ad–25(c)(2) (setting forth requirements for the composition of the Nominating Committee).

⁶² The Nominating Committee charter also provides that, should the departure of a Director cause the composition of the Board to no longer comply with applicable requirements under Rule 17Ad–25, the Nominating Committee shall convene as soon as is practicable to recommend a suitable candidate to the Board for its approval to fill such vacancy. See Exhibit E–2D of the Application.

directs the Nominating Committee to review its decision.

With respect to its operational arrangements and capacity to facilitate prompt and accurate clearance and settlement, as generally described in Part III.A.2 above, CMESC systems and processes will enable trade submission, matching, novation, netting, settlement and settlement fails management and will promote business continuity. CMESC's rules, policies and procedures demonstrate that CMESC has processes in place to support and oversee these clearing agency operations via its governance processes. These governance processes further demonstrate that CMESC is so organized and has the capacity to facilitate prompt and accurate clearance and settlement and to comply with the Exchange Act and rules and regulations thereunder. For example, with respect to CMESC's ability to comply with the provisions of the Exchange Act and rules and regulations thereunder, Exhibit E–2F states that CMESC's Chief Compliance Officer will have a reporting line to the Regulatory Oversight Committee of the Board of Directors. In addition, the Application describes CMESC's senior managers and their reporting relationships, including the staff that provides legal services through CMESC's parent company, CME Group, Inc.⁶³ These elements of the Application demonstrate that CMESC will have multiple layers of personnel dedicated to addressing legal and regulatory requirements, including, for example, the requirement to file proposed rule changes.

Additionally, per Exhibit E–2C, the Head of Risk will have a direct reporting line to the Risk Management Committee of the Board of Directors, allowing such officer to raise and escalate any issues pertaining to risk management. Exhibit E–2C provides that the Risk Management Committee is authorized to engage outside professional advisors and legal counsel in order to facilitate its discharge of its duties and responsibilities, including the review and approval of all risk-related proposed rule changes. Having multiple personnel, layers of review and reporting, and the ability to access additional resources in order to proactively manage CMESC's risks is one way the Application demonstrates that CMESC would be so organized and have the capacity to comply with the

⁶³ See, e.g., Exhibit C of the Application.

provisions of the Exchange Act and the rules and regulations thereunder.⁶⁴

For the reasons discussed above, the Commission determines that CMESC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and to comply with the provisions of the Exchange Act and the rule are regulations thereunder.

B. Participation Standards

1. Statutory Standard and Analysis: Section 17A(b)(3)(B)

Section 17A(b)(3)(B) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, (iv) bank, (v) insurance company, or (vi) other person or class of persons as the Commission, by rule, may from time to time designate as appropriate to the development of a national system or the prompt and accurate clearance and settlement of securities transactions may become a participant in such clearing agency.⁶⁵ Section 3(a)(24) of the Exchange Act defines a “participant” with respect to a clearing agency as any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities, and further states that the term does not include a person whose only use of a clearing agency is (A) through another person who is a participant or (B) as a pledgee of securities.⁶⁶

CMESC Rules identify two types of participants: Members and Users.⁶⁷ Members are able to clear proprietary Eligible Securities Transactions through CMESC and to authorize Users with respect to clearing Eligible Securities Transactions through CMESC.⁶⁸ Users

must be authorized by a Member,⁶⁹ but they are contractually bound to settle directly with the clearing agency.⁷⁰ Specifically, Users can submit transactions for clearing, post margin, and settle their transactions directly with CMESC.⁷¹ In the event a Member defaults, pursuant to CMESC Rule 412, CMESC can transfer a User’s open positions to a new Member.⁷² Users are further classified as Independent Users or Supported Users.⁷³ An Independent User is obligated to post margin and make OES payments to CMESC for its Independent User Account; for a Supported User, the Supported User’s authorizing Member is obligated to post margin and make OES payments to CMESC for the Supported User Account.⁷⁴

CMESC Rules identify the following persons as those that may be approved as either Members or Users, provided that they satisfy the applicable qualifications for participation: (i) broker-dealers registered pursuant to Sections 15 or 15C of the Exchange Act; (ii) banks that are subject to the supervision and regulation of their chartering authority in the U.S. at either federal (*i.e.*, the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation) and/or state level (*i.e.*, state banking agencies), or for non-U.S. banks, the foreign equivalent to such chartering authority (or authorities); (iii) futures commission merchants registered pursuant to the Commodity Exchange Act; (iv) unregistered investment pools, which are entities primarily engaged in the business of investing, reinvesting, or trading securities that hold pools of securities and/or other assets that meet specified criteria; and (v) proprietary trading firms.⁷⁵ CMESC Rules further

provide that trust companies, registered clearing agencies, registered investment companies, and insurance companies are eligible to become Users,⁷⁶ provided that they satisfy the applicable qualifications for participation.

The Commission finds that the Application satisfies the requirements of Section 17A(b)(3)(B) of the Exchange Act. CMESC Rules provide that each type of entity specified in Section 17A(b)(3)(B) of the Exchange Act may be either a Member or a User of CMESC. The Commission further agrees that both Members and Users would qualify as “participants” as defined in Section 3(a)(24) of the Exchange Act. Although Users must be authorized by a Member to join CMESC as a User,⁷⁷ Users are contractually bound to settle directly with the clearing agency and are not reliant on Members to settle their transactions.⁷⁸ Specifically, pursuant to CMESC Rules, Users can submit transactions for clearing, post margin, and settle their transactions directly with CMESC.⁷⁹ In the event that the Member authorizing a User defaults, CMESC can transfer the User’s open positions to a new Member,⁸⁰ rather than close out those positions as part of the defaulting Member’s portfolio.⁸¹

⁷⁶ CMESC Rules, at Rule 302(b) (citing Section 17A of the Exchange Act with respect to registered clearing agencies, Section 8 of the Investment Company Act with respect to registered investment companies, and Section 2(a)(17) of the Investment Company Act for its definition of insurance companies).

⁷⁷ Users must be nominated by a Member to be admitted as Users, and before nominating a User, a Member must conduct reasonable due diligence on such User’s credit and liquidity profile and operational capabilities regarding the User’s ability to fund its obligations to CMESC and, if applicable, to the Member. *See* CMESC Rules, at Rule 303(a)(iii). Such a condition is consistent with Section 17A(b)(4)(B), which states, as discussed further in Part III.B.2 below, that a registered clearing agency may deny participation, or condition participation, for persons who do not meet standards of financial responsibility, operational capability, experience, and competence.

⁷⁸ *See* CMESC Participation Letter at 1 & n.5; *see also* CMESC Rules, at Rules 305(c) and 311(d); and Exhibit J to CMESC’s Form CA–1, at p. 4 (stating that each Participant—Member, Independent User or Supported User—has direct contractual obligations to CMESC to settle its novated Eligible Securities Transactions and is directly liable for settlement of its cleared transactions).

⁷⁹ *See, e.g.*, CMESC Rules, at Rules 501, 602, 603. As noted above, pursuant to Rule 501, Independent Users are obligated to post margin and make OES payments to CMESC for its Independent User Account. *See supra* note 74.

⁸⁰ *See* CMESC Rules, at Rule 412; letter from Jonathan Marcus, Senior Managing Director and General Counsel, CME Group Inc., dated May 27, 2025 (“CMESC Response Letter”), at 6.

⁸¹ The Commission does not view CMESC’s decision to treat Users as “indirect participants” for purposes of applying the requirements of Rule 17Ad–22, *see* Exhibit J of the Application, at 3, as inconsistent with their status as “participants” under Section 3(a)(24) of the Exchange Act.

⁶⁴ *See supra* note 11 (summarizing the Commission rules applicable to registered clearing agencies and the Commission’s tools for the supervision and examination of registered clearing agencies).

⁶⁵ Section 17A(b)(3)(B) of the Exchange Act also states that the rules of the clearing agency are subject to the provisions of Section 17A(b)(4) of the Exchange Act.

⁶⁶ 15 U.S.C. 78c(a)(24).

⁶⁷ CMESC Rules, at Rule 101 (defining “participant”). For further discussion of the use of the term “participant,” including the definition of that term set forth in the Exchange Act, *see supra* note 66, *infra* note 81 and accompanying text.

⁶⁸ Exhibit E–3 of the Application (Rules of CME Securities Clearing Inc.) (“CMESC Rules”), at Rule 101 (defining Member). CMESC would require only its Members to submit Eligible Secondary Market Transactions for clearing and settlement. CMESC Rules, at Rule 202(b); *see also* CMESC Rules, at Rule 202(a) (defining “Eligible Secondary Market Transaction” as that term is defined in Rule 17Ad–22(a) under the Exchange Act).

⁶⁹ *See, e.g.*, Exhibit O of the Application, at 1 (explaining that, among other things, a User is any person that (i) a Member, based on appropriate due diligence, has nominated to CMESC to become a User, and (ii) has applied to CMESC for approval as a User, been approved by CMESC as such and has executed a User Agreement).

⁷⁰ CMESC Rules, at Rule 301(b); *see* letter from Jonathan Marcus, Senior Managing Director and General Counsel, CME Group Inc., dated Sept. 8, 2025 (“CMESC Participation Letter”) at 1 & n.5; *see also* CMESC Rules, at Rules 305(c) and 311(d); and Exhibit J to CMESC’s Form CA–1, at p. 4 (stating that each Participant—Member, Independent User or Supported User—has direct contractual obligations to CMESC to settle its novated Eligible Securities Transactions and is directly liable for settlement of its cleared transactions).

⁷¹ *See, e.g.*, CMESC Rules, at Rules 501, 602, 603.

⁷² *See* CMESC Rules, at Rule 412; CMESC Response Letter at 6.

⁷³ CMESC Rules, at Rule 101 (defining Independent User and Supported User).

⁷⁴ CMESC Rules, at Rule 501.

⁷⁵ CMESC Rules, at Rule 302(a).

2. Statutory Standard and Analysis: Section 17A(b)(4)(B)

Section 17A(b)(4)(B) of the Exchange Act states that a registered clearing agency may deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of the clearing agency. Section 17A(b)(4)(B) also provides that, a registered clearing agency may examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency.

With respect to the criteria for participation under Section 17A(b)(4)(B) of the Exchange Act, the Application describes how CMESC's participant⁸² structure affects its framework for managing risk. Specifically, CMESC has established requirements for applicants' financial resources, operational capacity, creditworthiness, and business experience. With respect to financial resources, the financial responsibility standards for Members vary depending upon the nature of the applicant's business,⁸³ but CMESC's minimum

Consistent with the analysis in Part III.B.1, in this order the Commission uses "participant" to mean both Members and Users as described in the Application, as Members and Users both meet the definition of "participant" as defined in Section 3(a)(24) of the Exchange Act. In the Treasury Clearing Adopting Release, the Commission described "indirect participants" as "generally, [the] customers or clients [of direct participants], which typically include market participants such as money market funds, hedge funds, other asset managers, and smaller banks or broker-dealers," which is consistent with how CMESC Rules define "User" and the requirements required to become a "Member." See Release No. 34-99149 (Dec. 13, 2023), 89 FR 2714, 2717 (Jan. 16, 2024) ("Treasury Clearing Adopting Release"); see also CMESC Rules, at Rule 202(a), (b) (establishing rules for the submission of Eligible Secondary Market Transactions, pursuant to Commission Rule 17Ad-22); see also CMESC Rules, at Rule 306(b). The Commission explained, at the time, that such indirect participants are "expressly excluded" from the Exchange Act definition of "participant" because no registered clearing agency then had organized its rules to enable such market participants to clear and settle their securities transactions directly with the clearing agency rather than only through a direct participant. Treasury Clearing Adopting Release, 89 FR at 2717 n.17. That analysis continues to apply to those then-existing structures for indirect participation.

⁸² CMESC Rules, at Rule 101 (defining "participant" as a Member or User).

⁸³ See CMESC Rules, at Rule 306(b). The rule states that, for example, a broker-dealer applicant shall have at least twenty million dollars (\$20,000,000) in net capital, as defined in Rule 15c3-1 under the Exchange Act, provided that such amount is greater than its minimum capital requirement thereunder and, in the case of a broker-dealer dually registered as a futures commission merchant under the Commodity Exchange Act, greater than the amount of adjusted net capital

financial responsibility standards apply only to Members.⁸⁴ A Member that authorizes a User is responsible for determining and enforcing minimum financial responsibility standards that apply to its authorized Users.⁸⁵ In addition, CMESC's financial standards require, among other things, that Member applicants have sufficient resources to make any required clearing fund contributions,⁸⁶ to pay cash settlement amounts,⁸⁷ to meet any applicable regulatory capital requirements,⁸⁸ and to satisfy all obligations to CMESC.⁸⁹ CMESC's operational criteria require prospective applicants (whether Members or Users) to have adequate personnel, books and records, accounting systems, and internal procedures to process transactions promptly and accurately, to communicate with CMESC, and to conform to any conditions imposed by CMESC.⁹⁰

CMESC has the authority to deny participant status to entities that, among other things, are subject to statutory disqualification under Section 3(a)(39) of the Exchange Act,⁹¹ have violated the anti-fraud provisions of federal securities laws, or have been convicted of a criminal offense.⁹²

CMESC will routinely review its Members and Users to ensure each adheres to CMESC's participation requirements on an ongoing basis. In this regard, CMESC requires Members to provide it with interim and annual financial statements and, periodically, certain regulatory reports (e.g., the FOCUS reports broker-dealers must file with the Financial Industry Regulatory Authority).⁹³ CMESC has the authority to conduct due diligence reviews of the financial responsibility and operational capability of any Member,⁹⁴ and Members must notify CMESC of any material changes to its organization, operations, or financial condition.⁹⁵ Members or Users must also furnish to CMESC adequate assurances of its

required under CFTC Regulation 1.17 under the Commodity Exchange Act. See CMESC Rules, at Rule 306(b)(i).

⁸⁴ CMESC Rules, at Rule 307(c).

⁸⁵ *Id.*

⁸⁶ CMESC Rules, at Rule 306(a)(i).

⁸⁷ *Id.*

⁸⁸ CMESC Rules, at Rule 306(b)(v).

⁸⁹ CMESC Rules, at Rule 306(a)(i).

⁹⁰ CMESC Rules, at Rules 306(a)(ii)-(v), 306(c), 307(a), (b).

⁹¹ 15 U.S.C. 78c(a)(39).

⁹² CMESC Rules, at Rule 308.

⁹³ CMESC Rules, at Rule 309(b)(i); see also CMESC Rules, at Rules 309(b)(ii)-(v) (regarding the financial reports required to be submitted by other Member types).

⁹⁴ CMESC Rules, at Rule 309(c).

⁹⁵ CMESC Rules, at Rule 311.

financial responsibility and operational capability.⁹⁶ In addition, CMESC has the authority to take action with respect to Members or Users that fail to maintain CMESC's participation requirements.⁹⁷ A Member or User that no longer satisfies CMESC's participation requirements is subject to disciplinary sanctions, including limitations on its access to CMESC's services, and possible loss of the privileges of participant status.⁹⁸

To assist the Commission in determining whether the Application establishes participation requirements consistent with Section 17A(b)(4)(B) of the Exchange Act, the Commission sought comment as to whether the Application proposes a sufficient level of surveillance and monitoring by CMESC of the risks posed by its Members and the two categories of Users, such that the Application has policies and procedures that establish objective, risk-based, and publicly disclosed criteria for participation and that require Members to have sufficient financial resources. In response, commenters stated that "[t]he minimum capital requirement for CMESC Members should be higher than proposed to ensure that no Member poses an unreasonably high risk to the other Members,"⁹⁹ and that CMESC should enhance risk management of Members by raising the minimum capital requirement for Members and should be adjusted based on the Member activity level.¹⁰⁰ Further, commenters stated that "[a]n authorizing Member should not be required to undertake due diligence on its Users beyond the level it deems necessary for its own risk management purposes,"¹⁰¹ that CMESC should not require an authorizing Member to undertake specified due diligence on its Users beyond the Member's own risk management as CMESC has the primary relationship with such Users, and that CMESC should clarify that authorizing Members are not responsible for any liability of any User to CMESC due to

⁹⁶ CMESC Rules, at 309(d); see also CMESC Rules, at 309(e) (providing a list of examples of documentation that would constitute adequate assurances).

⁹⁷ CMESC Rules, at Rule 902. With respect to CMESC's ability to enforce compliance by its participants with the rules of the clearing agency, the Commission further addresses this topic in Part III.F, in conjunction with discussing Section 17A(b)(3)(G) of the Exchange Act, which requires that the rules of the clearing agency provide that its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency. 15 U.S.C. 78q-1(b)(3)(G).

⁹⁸ CMESC Rules, at Rules 1001, 1002.

⁹⁹ SIFMA & AMG I at 14-15.

¹⁰⁰ FIA at 9.

¹⁰¹ SIFMA & AMG I at 11.

any disciplinary action against the User.¹⁰² One commenter also stated that Rule 306(c) is unclear whether Members need to monitor only the risks related to a User's clearing activity at CMESC, or risks arising from all aspects of a User's activity.¹⁰³

In response, CMESC stated that the minimum capital requirements for Members in Rule 306(b) provide an appropriate baseline for admission and that these minimum capital requirements are not the only mechanisms CMESC relies upon to ensure that Members will have sufficient financial resources and robust operational capacity to meet obligations arising from their clearing activity at CMESC. CMESC also identified that such other mechanisms include, but are not limited to, a credit rating process for Members, daily risk monitoring, margin collection, and OES exchange. In addition, CMESC stated that it may require a Member to meet a higher capital requirement as CMESC determines appropriate, taking into consideration the Member's risk profile, including the number and type of Users it authorizes and the volume, size and nature of such Users' cleared transactions.¹⁰⁴ Further, CMESC stated that it "recognizes that a Member retains the risk management expertise to appropriately design their due diligence and risk monitoring practices for the Users it authorizes with respect to their cleared transactions. CMESC, in turn, may request to review the Members' due diligence and risk monitoring policies and procedures to understand the Members' relationships with Users and the risk controls and mitigants that Members utilize to manage their risks with respect to such Users in order to identify and monitor the risks that Members and their User relationships may pose to CMESC."¹⁰⁵

Because CMESC Rules would establish participation requirements that include financial standards for Members and operational competency standards for Members and Users that clearly denote ongoing compliance obligations and set forth consequences for failing to meet those obligations, CMESC Rules are sufficient to protect the clearing agency from the risks that can be associated with Members and Users who would not otherwise meet such competency standards. In addition, consistent with the requirements in Rules 17Ad-22(e)(18) and (19), which would apply to CMESC, it is appropriate

for CMESC to request from Members their due diligence and risk monitoring policies and procedures to understand how Members are managing their relationships with Users and the risk controls and other mitigants Members' may choose to apply. Consistent with Rules 17Ad-22(e)(18) and (19), such requests may also extend to Users' activity beyond CMESC itself to activity at other clearing agencies, such as in cases where those Users may be relying on cross-margining arrangements.

For the reasons discussed above, the Commission determines that the rules of CMESC regarding participation in the clearing agency are consistent with the standards set forth in Section 17A(b)(4)(B) of the Exchange Act.

C. Fair Representation

1. Statutory Standard: Section 17A(b)(3)(C)

Section 17A(b)(3)(C) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.¹⁰⁶

2. Summary of Application and Analysis

Per Exhibit E-2B, CMESC will have a nine-member Board of Directors, all of whom are elected by CMESC's sole shareholder, CME Group, Inc. The shareholder is authorized, per Article III, Section 6 of Exhibit E-2A(2), to remove any and all members of CMESC's Board of Directors, with or without cause, at any time. One board member position will be restricted to a person who is an officer, director, or employee of a Member of the clearing agency, and one board member position will be restricted to a person who is an officer, director, or employee of a User of the clearing agency. In addition, at least five positions of CMESC's nine-member Board of Directors will be independent directors.¹⁰⁷ In its Application, CMESC has not included provisions for apportioning equity interests (for example, voting stock) in CMESC to Members or Users.

Under Section 17A(b)(3)(C) of the Exchange Act, the Commission considers whether the Application

provides fair representation both to shareholders and to participants. In doing so, the Commission undertakes an analysis of the documents in the Application that govern or otherwise affect the selection of directors by the clearing agency and the administration of its affairs. Such documents include, for example, the constitution, articles of incorporation, bylaws, rules, and written policies or procedures. Such analysis considers both qualitative and quantitative factors, including the number of board positions reserved for management or to represent participants, as well as the existence of provisions in governing documents that may impede participation in the selection of directors or the administration of affairs. The Commission also considers the overall organization of the clearing agency, the nature of the products it clears, and the structure of the market it serves, including the nature of existing clearing and settlement arrangements in the market served, the existence of other clearing agencies that would compete to offer services, and the size of the market served by the applicant, to evaluate whether the representation proposed by the applicant is consistent with the requirements of the Exchange Act.¹⁰⁸

After performing this analysis, the Commission finds that the Application provides fair representation for the reasons set forth below.

With respect to the fair representation of the shareholders in the selection of its directors and administration of its affairs, CMESC's parent company is the same legal entity as the sole shareholder of CMESC. The shareholder cannot select as independent directors individuals that have a material relationship with the parent company, as "material relationship" and "affiliate" are defined in Rule 17Ad-25.¹⁰⁹ The shareholder does have the right to elect all members of the Board of Directors, though five of the nine board members must not have material relationships with such shareholder (because the shareholder is also an affiliate of CMESC) to meet the

¹⁰⁸ Accordingly, the level of participant representation needed to ensure fair representation consistent with the Exchange Act may vary depending on the facts and circumstances, including the market or markets to which the application is directed.

¹⁰⁹ See 17 CFR 240.17ad-25(a) (defining "material relationship" to mean a relationship, whether compensatory or otherwise, that could affect the independent judgment or decision-making of the director and "affiliate" to mean a person that directly or indirectly controls, is controlled by, or is under common control with the registered clearing agency); see also Release No. 34-98959 (Nov. 16, 2023), 88 FR, 84454, 84455-56 (Dec. 5, 2023).

¹⁰⁶ Section 17A(b)(3)(C) of the Exchange Act also states that the Commission may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency.

¹⁰⁷ See Exhibit C-2 of the Application.

¹⁰² FIA at 3.

¹⁰³ *Id.* at 11.

¹⁰⁴ CME Response Letter at 7.

¹⁰⁵ *Id.* at 8.

requirements in Commission rules for independent directors.¹¹⁰ Additionally, the shareholder is authorized to remove any and all members of CMESC's Board of Directors, with or without cause, at any time. Finally, the Board of Directors will be responsible for the operations of the clearing agency and will have oversight of the executives who are managing CMESC, which also allows the shareholder to obtain fair representation in the administration of CMESC's affairs. Taken as a whole, these provisions assure a fair representation of the shareholders of CMESC in the selection of its directors and administration of its affairs.

With respect to fair representation of the participants of CMESC in the selection of its directors and administration of its affairs, the parent company of CMESC is the sole shareholder, and so the Application includes no provision to make CMESC voting stock available for purchase to Members or Users. As such, CMESC would operate in a manner that is different from some other registered clearing agencies, which are constituted of owner-members.¹¹¹ One position on the Board, however, will be reserved for a representative of a Member and one position for a representative of a User. The charter for the CMESC Board of Directors provides that the composition of the Board, taken as a whole, shall represent the views of the owners and participants of CMESC, including a selection of Directors that reflects the range of different business strategies, models and sizes across participants, as well as the range of customers and clients the participants serve.¹¹² It further provides that "at least a majority of the Directors shall be Independent Directors."¹¹³ In addition, while one position is reserved each for a representative of a Member and of a User, representatives from among Members and Users also could be selected for additional positions on the Board of Directors as CMESC seeks to satisfy Commission requirements for independent directors under Rule 17Ad-25. For example, representatives

from Members and Users could qualify as independent directors, to the extent that those representatives do not have material relationships with CMESC under Rule 17Ad-25.¹¹⁴ Such directors would have an opportunity to serve on the Nominating Committee, which, as previously discussed,¹¹⁵ must make determinations regarding the fitness of nominees and whether nominees would meet the definition of "independent director" consistent with Commission rules. Such ability to influence the nomination of directors is an important component of participant representation in the selection of directors. In addition, pursuant to the charter, the Nominating Committee "shall nominate all persons who stand for election as Director."¹¹⁶ Taken as a whole, the above-described provisions of the CMESC Application provide Members and Users with a role in the review and nomination of directors, which provides fair representation regarding the selection of directors.

In addition, reserving a position on the Board for one Member and one User—and the absence of provisions that might impede or restrict these positions to carry out their duties when compared to other board directors or classes of board directors—ensures representation on the Board and therefore also helps ensure that Members and Users have representation in the administration of CMESC's affairs.¹¹⁷ As such CMESC's approach, in reserving positions on the Board of Directors for a representative of a Member and a representative of a User, is consistent with fair representation, helping to provide a voice in CMESC's governance to a range of views from among the customers of the clearing agency.¹¹⁸ Taken as a whole, the provisions of the CMESC Application described above assure a fair representation of the participants of CMESC in the selection of its directors and administration of its affairs.

For the reasons discussed directly above, the Commission determines that the rules of CMESC assure fair

representation in the selection of its directors and administration of its affairs consistent with Section 17A(b)(3)(C) of the Exchange Act.

D. Fees

1. Statutory Standard: Section 17A(b)(3)(D) and (E)

Section 17A(b)(3)(D) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.¹¹⁹ Section 17A(b)(3)(E) of the Exchange Act states that a clearing agency shall not be registered unless the rules of the clearing agency do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.¹²⁰

2. Summary of Application and Analysis

CMESC's Application does not include a fee schedule or schedule of prices; however, CMESC's Application does describe: (i) its authority to determine and equitably allocate fees;¹²¹ (ii) its rule and procedures regarding fees;¹²² and (iii) the status of its proposed fee schedule,¹²³ as subsequently updated in the CMESC Fees Letter. Separately, the Application states that CMESC "does not fix prices, rates, or fees for services rendered by its participants (*i.e.*, its Members or Users)."¹²⁴

¹¹⁹ 15 U.S.C. 78q-1(b)(3)(D).

¹²⁰ 15 U.S.C. 78q-1(b)(3)(E).

¹²¹ See Exhibit E-2A(2) of the Application, Amended and Restated By-Laws of CME Securities Clearing Inc. ("CMESC By-Laws"), at Article X, Section 4.

¹²² See CMESC Rules, at Rule 801; Exhibit E-4 of the Application, Procedures of CME Securities Clearing Inc. ("CMESC Procedures"), at Procedure 8-1.

¹²³ See Exhibit E-5 of the Application (stating that "[CMESC] is developing its fee schedule and intends to charge both Members and Users. [CMESC] continues to engage the marketplace on its ultimate fee structure, which [CMESC] plans to finalize as it approaches the launch date for operating the clearing agency. [CMESC] notes that cleared repo and cleared U.S. Treasuries will operate in a competitive environment, which in turn is expected to impact fees. The fees for Members and Users will be published on CMESC's website when its clearing services are launched after filing a proposed rule change with the Commission pursuant to [Section 19(b)(3)(A) of the Exchange Act]").

¹²⁴ See Exhibit Q of the Application (responding to the exhibit's requirement for an applicant for registration as a clearing agency to "[a]ttach as Exhibit Q a schedule of any prices, rates or fees fixed by registrant for services rendered by its participants"). See also 15 U.S.C. 78q-1 (requiring that the "rules of the clearing agency do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants").

¹¹⁰ See 17 CFR 240.17ad-25(a).

¹¹¹ Securities Acts Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. 94-75, 94th Cong., 1st Sess. 123-24 (1975) ("[T]he bill establishes no norm as to whether clearing agencies should or should not be operated for profit. The bill makes no attempt to set up particular standards of representation or participation. Rather, it provides that the Commission must assure itself that the rules of the clearing agency regarding the manner in which decision are made give fair voice to participants as well as to shareholder . . .").

¹¹² See Exhibit E-2B at 1.

¹¹³ See *id.*

¹¹⁴ See *supra* note 109 and accompanying text (defining "material relationship" under Rule 17Ad-25).

¹¹⁵ See *supra* note 61 and accompanying text (discussing the responsibilities of the Nominating Committee).

¹¹⁶ See Exhibit E-2B at 4.

¹¹⁷ See 17 CFR 240.17ad-25(j) ("Rule 17Ad-25(j)"); Treasury Clearing Adopting Release, *supra* note 81, 89 FR at 2755.

¹¹⁸ See *supra* note 111. Commission rules also require, pursuant to Rule 17Ad-25(j), that registered clearing agencies provide mechanisms for input from direct and indirect participants, with respect to material developments in its governance and operations on a recurring basis. 17 CFR 240.17ad-25(j).

(a) Authority To Determine and Equitably Allocate Fees

CMESC's Exhibit E-2A(2) includes Section 4 of CMESC's by-laws, explaining its authority to determine fees (and the limits to this authority).¹²⁵ This section states that CMESC's Board of Directors has the authority to determine "the amount of fees, dues, assessments, and other charges to be paid by Members and Users and any other persons using any facility or system that [CMESC] operates or controls."¹²⁶ This section also explains that any "fees, dues, assessments, and other charges *shall be equitably allocated among Members and Users and any other persons using any facility or system that [CMESC] operates or controls.*"¹²⁷

The CMESC Fees Letter identified five factors that CMESC may consider in developing its fee schedule: (i) market structure and competition; (ii) transaction volumes and liquidity; (iii) operational costs; (iv) market participant feedback; and (v) regulatory considerations.¹²⁸ Regarding market structure and competition, CMESC stated it "may consider the structure of the Treasury market and the competitive landscape, including alternative services offered by competing clearing agencies, existing transaction costs, incentives for central clearing and the different categories of Participants (*e.g.*, Members vs. Users; Independent Users vs. Supported Users)."¹²⁹ CMESC stated that it also may consider "transaction volumes in both cash market and repo transactions in Treasury securities, open positions and the overall liquidity of the Treasury markets."¹³⁰ Discussing operation costs, CMESC stated possible considerations include costs related to clearing systems, legal and compliance functions, risk management requirements, and the liquidity and capital to support the clearing service.¹³¹ CMESC also stated it could consider feedback from market participants in developing its fee structure.¹³² CMESC stated that regulatory considerations may include

whether its fees, dues, or charges are "appropriately related to clearing services" or "the administration of the clearing agency."¹³³ Along with a consideration of these possible factors, CMESC stated it will design its fee structures to align with the requirements of the Exchange Act and the rules and regulations thereunder, including applicable guidance, and establish such fees in accordance with its Rule 801.¹³⁴

(b) CMESC's Rules and Procedures Regarding Fees

CMESC's Rule 801 governs fees ("Charges for Services Rendered")¹³⁵ and addresses: (i) its Members and Users' responsibility to pay fees and charges;¹³⁶ (ii) the approach to "unusual" expenses;¹³⁷ and (iii) billing mechanics.¹³⁸

Exhibit E-4 sets forth CMESC Procedures, including "Procedure 8-1. Product-Specific Fees and Charges,"¹³⁹ which explains that fees arising from CMESC's provision of services "will be set out in a Schedule of Fees *specific to each Eligible Securities Transaction.*"¹⁴⁰ The exhibit also states that CMESC will publish its "Schedule of Fees" on its website.¹⁴¹

(c) Comments Received

The Commission received no comments on CMESC's authority, rules, or procedures for determining fees,¹⁴²

except that CMESC submitted the CMESC Fees Letter, discussed above, providing an update on the development of its fee schedule.¹⁴³ CMESC stated that it is "actively engaging with market participants to inform the design of its final fee structure."¹⁴⁴ CMESC stated that it expects to finalize its fee structure "as [CMESC] approaches the launch date for Treasury securities clearing services."¹⁴⁵ CMESC stated that, in finalizing its fee schedule, it will rely upon the experience of its affiliate (Chicago Mercantile Exchange, Inc.) in setting fees as a CFTC-regulated derivative clearing organization.¹⁴⁶

(d) Analysis

As noted above, CMESC is not yet operating as a clearing agency,¹⁴⁷ and CMESC "continues to engage the marketplace on its ultimate fee structure, which [CMESC] plans to finalize as it approaches the launch date for operating the clearing agency."¹⁴⁸ CMESC's Application, however, identifies CMESC's existing authority, rules, and procedures governing any fees that it will assess on its participants, as described above.¹⁴⁹ These existing authority, rules, and procedures require that CMESC's fees are "equitably allocated," "approved on a reasonable and non-discriminatory basis," and "specific to each Eligible Securities Transaction," which is consistent with the requirement that CMESC's rules provide for the equitable allocation of reasonable dues, fees, and other charges.¹⁵⁰ Furthermore, the CMESC Fees Letter specifically stated that "its final fee schedules will be reasonably designed to satisfy the requirements of [. . . Section] 17A(b)(3)(D)."¹⁵¹ Separately, any fees, dues or other charges that CMESC intends to assess must be filed as a proposed rule change pursuant to Section 19(b) of the Exchange Act and

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ See CMESC Rules, at Rule 801.

¹³⁶ See CMESC Rules, at Rule 801(a) (stating that it is each Member's and User's responsibility to pay fees "for services rendered by [CMESC] as set forth in the Rules and Procedures and approved by the Board on a reasonable and non-discriminatory basis).

¹³⁷ See CMESC Rules, at Rule 801(b) (explaining that CMESC may charge a Member or User "for any unusual expenses caused directly or indirectly by such Member or User," and that unusual expenses could include "the cost of producing records pursuant to court order or other legal process in any litigation or other legal proceeding, whether or not such Member or User is party to such litigation or proceeding").

¹³⁸ See CMESC Rules, at Rule 801(c) (stating that CMESC will bill its Members and Users on a monthly basis for charges for the preceding month, billing each Member for charges related to the Member and its Supported Users, and each Independent User for charges related to that Independent User).

¹³⁹ See CMESC Procedures, at Procedure 8-1.

¹⁴⁰ See *id.* (emphasis added).

¹⁴¹ See *id.*

¹⁴² The Commission received two comment letters addressing CMESC's disclosure of costs associated with default management. FIA at 6-7; SIFMA & AMG I at 14. These comments are unrelated to the Commission's required analysis of the Application under Section 17A(b)(3)(D) of the Exchange Act, and so are addressed in the context of Section 17A(b)(3)(F) and discussion of Rule 17Ad-22(e)(23)(ii) in Part III.E.2.d.

¹⁴³ See CMESC Fees Letter at 1.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ See *supra* notes 13-14 and accompanying text (explaining that approval of clearing agency registration does not mean that no further modifications of the applicant's rules, systems, procedures, or practices are needed and that the obligations of a fully registered clearing agency cannot end after registration).

¹⁴⁸ See Exhibit E-5 of the Application.

¹⁴⁹ See *supra* III.D.2.a) and b).

¹⁵⁰ *Id.*

¹⁵¹ See CMESC Fee Letter at 1; see also 15 U.S.C. 78q-1(b)(3)(D) (requiring that a clearing agency's rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants).

¹²⁵ See CMESC By-Laws, at Article X, Section 4.

¹²⁶ See *id.*

¹²⁷ See *id.* (emphasis added).

¹²⁸ Letter from Jonathan Marcus, Senior Managing Director and General Counsel, CME Group Inc., dated May 27, 2025 ("CMESC Fees Letter"), at 1-2. CMESC submitted two letters on the same day, May 27, 2025: the CMESC Response Letter and the CMESC Fees Letter. Since they were received on the same date, both letters appear on the Commission's website as one entry.

¹²⁹ *Id.* at 2.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

Rule 19b-4 thereunder.¹⁵² Clearing agencies fees are subject to the requirements of the Exchange Act, including Section 17A(b)(3)(D).¹⁵³

Accordingly, the Commission determines that the Application is consistent with Section 17A(b)(3)(D) of the Exchange Act. In addition, as noted above, CMESC's Application states that CMESC does not "fix prices, rates, or fees for services by its participants (*i.e.*, its Members or Users)."¹⁵⁴ The Commission therefore determines that CMESC's prohibitions against the fixing of prices of its Members and Users meet the requirements of Section 17A(b)(3)(E) of the Exchange Act.¹⁵⁵

E. Rules Designed To Promote Prompt and Accurate Clearance and Settlement and the Safeguarding of Securities and Funds

1. Statutory Standard: Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest. It also states that a clearing agency shall not be registered unless the Commission determines that the rules are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, or to regulate by virtue of any authority conferred by the Exchange Act matters

¹⁵² See 15 U.S.C. 78s(b); 17 CFR 240.19b-4; see also Exhibit E-5 of the Application (acknowledging its obligations under Section 19(b) and Rule 19b-4).

¹⁵³ 15 U.S.C. 78q-1(b)(3)(D); see also 15 U.S.C. 78s(b) (requiring proposed rule changes to be filed by the Commission, which shall publish notice thereof and give interested persons an opportunity to respond). Some proposed rule changes regarding dues, fees, or charges take effect upon filing. See 15 U.S.C. 78s(b)(3)(A)(ii); see also 15 U.S.C. 78s(b)(3)(C) (specifying when the Commission may temporarily suspend the immediate effectiveness of such filings).

¹⁵⁴ See *supra* note 124 and accompanying text.

¹⁵⁵ 15 U.S.C. 78q-1(b)(3)(E).

not related to the purposes of this section or the administration of the clearing agency.¹⁵⁶

2. Summary of Application and Analysis

The Commission has adopted multiple rules that are related to Section 17A(b)(3)(F), in that they establish requirements related to financial risk management, default management and loss allocation, and recovery and orderly wind-down. Specifically, these Commission rules implicate the safeguarding of securities and funds and promoting the prompt and accurate clearance and settlement of securities transactions, including the collection of margin, composition of the guaranty fund, default management and loss allocation procedures, and other risks.¹⁵⁷ To analyze CMESC's Application under Section 17A(b)(3)(F), the Commission has considered CMESC's Rules concerning its account structures, margin system, guaranty fund, default management, and loss allocation processes, as set forth in further detail below.

As a threshold matter, the CMESC Application establishes a comprehensive risk management framework consistent with Commission rules that help ensure CMESC will collect sufficient margin to cover its exposures, maintain an appropriately sized Guaranty Fund, and will be able to manage a default and allocate losses appropriately, if or when needed. CMESC's risk management framework is designed to address the particular features of CMESC's proposed participation structure, *i.e.*, to manage the risks presented by Members and Users who have different obligations to CMESC and access CMESC. For these reasons and the reasons discussed below, the Commission determines that

¹⁵⁶ With respect to the provisions in Section 17A(b)(3)(F) of the Exchange Act requiring that the rules of the clearing agency are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency and not regulate by virtue of any authority conferred by the Exchange Act matters not related to the purposes of the Exchange Act or the administration of the clearing agency, those topics have been addressed in Parts III.B and III.G, concerning the statutory requirements for, respectively, participant standards of the clearing agency and addressing the clearing agency's burden on competition. With respect to the provisions requiring that the rules foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, those topics have been addressed in Part III.G, concerning the statutory requirements addressing the clearing agency's burden on competition.

¹⁵⁷ See 17 CFR 240.17ad-22(e)(4), (e)(6), (e)(13), (e)(23)(ii); 240.17ad-26.

CMESC's rules are consistent with the requirements for the prompt and accurate clearance and settlement of securities and the safeguarding of funds and securities as set forth in Section 17A(b)(3)(F) of the Exchange Act and do not regulate by virtue of any authority conferred by the Exchange Act matters not related to the purposes of Section 17A of the Exchange Act or the administration of the clearing agency.

(a) Account Structure and Safeguarding of Securities and Funds

In Exhibit L, CMESC explains that, with the exception of initial margin and Guaranty Fund contributions, it does not maintain custody of or otherwise safeguard Members' or Users' securities or cash in clearing transactions, and that only in limited circumstances does CMESC exercise control of such securities or cash.¹⁵⁸ According to CMESC Rules, initial margin posted with CMESC will be received by Bank(s) designated by CMESC and deposited into separate omnibus accounts for Members, Supported Users that are registered broker-dealers, other Supported Users, and Independent Users.¹⁵⁹ Those accounts will also be used for deposits related to an OES.¹⁶⁰ Any cash posted for margin purposes may be partially or wholly invested in U.S. Treasury securities with a maturity of one year or less, and any investment income or losses from cash deposited for margin purposes shall accrue to CMESC, unless otherwise set forth in the Procedures.¹⁶¹ Per CMESC Rules, Qualified Margin Securities posted for margin purposes may be posted with CMESC by a Member for its Member Account, by a Member on behalf of its Supported Users for such Supported Users' Supported User Accounts, and by an Independent User for its Independent User Account.¹⁶²

Pursuant to CMESC Rules, before submitting any Repo Transaction or Cash Treasury Transaction to CMESC for clearing, a Member or User must establish a settlement account at CMESC's Securities Settlement Bank for the relevant transactions.¹⁶³ A Member or User that is a cash lender must establish a collateral account in its name and for its exclusive benefit at CMESC's Securities Settlement Bank.¹⁶⁴ A Securities Settlement Bank must be subject to supervision under Federal or

¹⁵⁸ Exhibit L at 1.

¹⁵⁹ CMESC Rules, at Rule 507(a).

¹⁶⁰ CMESC Rules, at Rule 507(a).

¹⁶¹ CMESC Rules, at Rule 505(a)(ii).

¹⁶² CMESC Rules, at Rule 505(b)(i).

¹⁶³ CMESC Rules, at Rule 1504(c).

¹⁶⁴ CMESC Rules, at Rule 1504(c).

State banking laws and will be designated by CMESC for the purpose of facilitating settlement of Eligible Securities Transactions and for holding collateral for Repo Transactions, as applicable.¹⁶⁵ The account structure at a Securities Settlement Bank will be used to settle Repo Transactions and Cash Treasury Transactions.¹⁶⁶

One commenter made suggestions regarding risk management procedures related to the relationship between a Member and its Users, including with respect to: a Member's responsibility for porting of User accounts;¹⁶⁷ a Member's control over aspects of a User's margin;¹⁶⁸ a User's done-away transactions;¹⁶⁹ and a User default.¹⁷⁰ These suggestions pertain to certain choices CMESC has made in designing its clearing agency but do not bear on whether CMESC's Application is consistent with a specific Commission rule, or whether CMESC's application more generally meets the standard for registration.

(b) Margin System

Pursuant to CMESC Rules, CMESC will determine initial margin requirements for any Eligible Securities Transactions it clears.¹⁷¹ CMESC will calculate initial margin amounts under the Portfolio Margin Collection method, based on a Member's or User's portfolio of Eligible Securities Transactions in accordance with CMESC's margin model at least twice daily during the intraday and end-of-day clearing cycles.¹⁷²

In Exhibit J, CMESC describes that margin is calculated in accordance with CMESC's proprietary risk-based margin model, the SPAN 2 framework, and is designed to cover price movements over the margin period of risk, which for Eligible Securities Transactions is at

least two business days.¹⁷³ The SPAN 2 framework is designed to achieve the desired coverage level of 99% over the margin period of risk on an ex post basis using parameters based on relevant historical data.¹⁷⁴ Exhibit J further describes that the SPAN 2 methodology generates scenarios for the risk factors relevant for securities products cleared by CMESC, such as the change in value of the Treasury securities and repo rate.¹⁷⁵ The SPAN 2 framework also includes a liquidity and concentration risk component to account for the additional risks that may arise in closing out a concentrated portfolio of a Defaulting Member or Defaulting User.¹⁷⁶

Pursuant to CMESC Rules, a Member will post margin for its own account and on behalf of its authorized Supported Users for their Supported User Accounts.¹⁷⁷ At least once each business day, each Member with any authorized Supported User will submit a collateral value report to CMESC with instructions regarding how to allocate margin deposited by the Member for Supported Users.¹⁷⁸ An Independent User will post margin for its Independent User Account.¹⁷⁹ Members and Users must deposit margin in cash or Qualified Margin Securities and/or such other non-cash form(s) in amounts, and in the manner, specified by CMESC from time to time.¹⁸⁰ All initial margin calls must be met in cash, unless CMESC otherwise approves.¹⁸¹ Any cash posted for margin purposes may be partially or wholly invested in U.S. Treasury securities with a maturity of one year or less, and investment income or losses from cash deposited for margin purposes shall accrue to CMESC.¹⁸² Qualified Margin Securities posted for margin purposes will be deemed to be deposited when CMESC confirms receipt, and all interest, dividends, or gain received or accrued on such securities before any sale or negotiation thereof, and any proceeds from the maturity of the securities received by CMESC shall belong to the Member or User that posted such securities.¹⁸³

One commenter stated that CMESC should limit its discretion in returning

excess margin.¹⁸⁴ Commission rules do not require specific practices with respect to the return of excess margin, and so this comment does not bear on whether CMESC's Application is consistent with a specific Commission rule, or whether CMESC's application more generally meets the standard for registration.

(c) Guaranty Fund

CMESC Rules provide that Members shall contribute to the Guaranty Fund.¹⁸⁵ Each Member's Required Guaranty Fund Contribution shall be made in cash or U.S. Treasury securities with remaining maturities of less than ten years, and any Default Assessment shall be met in cash unless otherwise permitted by CMESC.¹⁸⁶ Cash and securities posted for Guaranty Fund purposes shall be deposited in an account in the name of CMESC in a depository institution selected by CMESC.¹⁸⁷ Any cash may be partially or wholly invested in U.S. government obligations or any other interest-bearing investments which provide safety and liquidity of the principal invested, as determined by CMESC.¹⁸⁸

Members will be required to contribute to the Guaranty Fund, and a Member's contribution may be used to cover losses incurred by CMESC as a result of a Member or User Default.¹⁸⁹ The Guaranty Fund shall be maintained in an amount, determined by CMESC using its stress test methodology and in accordance with CMESC's Procedures, at least equal to the largest theoretical loss to CMESC in excess of initial margin resulting from the default of two Member Families.¹⁹⁰ According to CMESC Rules, a Member's Required Guaranty Fund Contribution will be determined based on the Member's proprietary transactions and transactions of Users authorized by the Member.¹⁹¹ Each Member's Required Guaranty Fund Contribution shall be made in U.S. Dollar cash or U.S. Treasury securities with remaining maturities of less than ten years.¹⁹² Any cash posted may be partially or wholly invested in U.S. government obligations or any other interest-bearing

¹⁶⁵ CMESC Rules, at Rule 101.

¹⁶⁶ CMESC Procedures, at Procedure 5–6.

¹⁶⁷ FIA at 7, 11–12 (requesting that CMESC explicitly require all parties to consent prior to porting a User, including the transferring Member and the receiving Member; and that User positions only be liquidated in the event of a Member default if porting cannot be effected).

¹⁶⁸ *Id.* at 9 (requesting that CMESC allow Members to obtain a security interest through control rather than a financing statement).

¹⁶⁹ *Id.* at 7 (requesting that CMESC require Member consent to cancel or modify a transaction).

¹⁷⁰ *Id.* at 4–5, 8 (requesting that CMESC permit a Member to trigger a User default; that CMESC permit a Member to transfer a User's transactions to the Member's account upon a User liquidation; and that CMESC act on the instruction of a Member regarding return of margin or delivery of a settlement payment in the context of a User default).

¹⁷¹ CMESC Rules, at Rule 501.

¹⁷² CMESC Rules, at Rule 502(a); *see also* CMESC Procedures, at Procedure 5–2 (further describing the Portfolio Margin Collection method).

¹⁷³ *See* Exhibit J of the Application, at 8.

¹⁷⁴ *See id.*

¹⁷⁵ *See id.*

¹⁷⁶ *See id.*

¹⁷⁷ CMESC Rules, at Rule 501.

¹⁷⁸ CMESC Rules, at Rule 502(e).

¹⁷⁹ CMESC Rules, at Rule 501.

¹⁸⁰ CMESC Rules, at Rule 502(b); *see also* CMESC Procedures, at Procedures 5–3 and 5–4.

¹⁸¹ CMESC Rules, at Rule 502(b).

¹⁸² CMESC Rules, at Rule 505(a).

¹⁸³ CMESC Rules, at Rule 505(b).

¹⁸⁴ FIA at 6.

¹⁸⁵ CMESC Rules, at Rule 401.

¹⁸⁶ CMESC Rules, at Rule 403(a).

¹⁸⁷ CMESC Rules, at Rule 404.

¹⁸⁸ CMESC Rules, at Rule 404(c).

¹⁸⁹ CMESC Rules, at Rules 401(a), (b).

¹⁹⁰ CMESC Rules, at Rule 402(a). Member Family is defined as a group consisting of a Member and any other Member that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Member. *See* CMESC Rules, at Rule 101.

¹⁹¹ CMESC Rules, at Rule 402(b).

¹⁹² CMESC Rules, at Rule 403(a).

investments which provide safety and liquidity of the principal invested, and, to the extent not so invested, such cash funds shall be deposited in an account in the name of CMESC in a depository institution or institutions selected by CMESC.¹⁹³ Any investment income or losses to principal from cash deposits to the Guaranty Fund shall accrue to CMESC, and CMESC shall maintain a list of U.S. government obligations or any other interest-bearing investments in which cash in the Guaranty Fund may be invested, and the amounts invested at any given time.¹⁹⁴ Securities posted for Guaranty Fund purposes shall be deposited by the Member, and held by CMESC, in CMESC's name in a depository institution or institutions selected by CMESC.¹⁹⁵ Such securities will be deemed to be posted when CMESC confirms receipt, and all interest, dividends, or gain received or accrued on such securities before any sale or negotiation thereof, and any proceeds from the maturity of the securities received by CMESC shall belong to the Member that deposited such securities.¹⁹⁶

Regarding Guaranty Fund sizing, Rule 17Ad-22(e)(4)(iii) under the Exchange Act requires covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, maintain additional financial resources at a minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. In connection with sizing the Guaranty Fund, CMESC Rules and Procedures state that it will maintain resources at least equal to the largest theoretical loss to CMESC resulting from the default of two Member Families in extreme but plausible market conditions, covering, as applicable, Member Accounts and a predefined number of User Accounts with the largest credit exposures at each Member.¹⁹⁷ CMESC's approach is consistent with Commission rules because, CMESC's Guaranty Fund sizing methodology may produce a Guaranty Fund size larger than the one computed to the default of the participant family that would potentially cause the largest

aggregate credit exposure. Therefore, the Guaranty Fund sizing methodology is reasonably designed to be consistent with Rule 17Ad-22(e)(4)(iii).¹⁹⁸

In addition, Rule 17Ad-22(c)(1) under the Exchange Act requires that a registered clearing agency calculate and maintain a record each fiscal quarter, or any time upon Commission request, of the financial resources necessary to meet the requirements in Rule 17Ad-22(e)(4). Consistent with this requirement, CMESC will produce a record that CMESC calculates and maintains assuming the default of at least the largest Member Family and reflecting all of the Member Family's exposures including Users, and Commission staff will be able to consider that record through its ongoing monitoring of CMESC as part of the Commission's supervisory program, to consider and assess the performance of the existing Guaranty Fund sizing methodology over time.

(d) Default Management and Loss Allocation

In Exhibit J, CMESC states that it employs a risk management framework intended to reduce the potential impact of a Participant Default via credit risk standards and ongoing monitoring and to ensure that it has sufficient financial resources to manage a Default of its largest Participants.¹⁹⁹ In the event of a Default, CMESC will rely upon established credit and liquidity "waterfalls" to prevent losses to its Members and Users and minimize the potential for market disruption.²⁰⁰

Pursuant to CMESC Rules, upon the occurrence of a Member Default or User Default, CMESC will notify all Members and, as appropriate, Users.²⁰¹ CMESC Rules provide that CMESC may hedge open positions of the defaulter.²⁰² CMESC will initiate the close-out process. In the case of a Defaulting User and time permitting, CMESC may provide the authorizing Member the opportunity to terminate the Defaulting User's obligations to CMESC by satisfying them in full.²⁰³ With respect

¹⁹⁸ However, CMESC's methodology does not consider, as part of a Member Family's exposure, all a Member's Users' positions. *See id.* (referencing a predetermined number of Users). Under CMESC's Rules, the Member is obligated to satisfy the Guaranty Fund contributions of its Users and to perform for the User in the event of the User's default. *See* CMESC Rules, at Rules 402(b), 301(b), 406(b)(iii).

¹⁹⁹ Exhibit J of the Application, at 7. CMESC's Rules provide for both "Member Default" and "User Default," which are defined terms. *See, e.g.,* CMESC Rules, at Rules 901, 902.

²⁰⁰ Exhibit J of the Application, at 8.

²⁰¹ CMESC Rules, at Rule 1507(b).

²⁰² CMESC Rules, at Rules 406(a)(i), (b)(i).

²⁰³ CMESC Rules, at Rule 1507(b).

to positions of Defaulting Members or any remaining positions of Defaulting Users and time permitting, potentially impacted non-Defaulting Members and non-Defaulting Users with open positions may submit a close-out request to CMESC.²⁰⁴ CMESC shall pay such Member or User any reasonable loss or cost incurred in connection with such close-out, and such Member or User shall pay CMESC any profit or gain made in connection therewith.²⁰⁵ With respect to any positions that have not been terminated or closed-out CMESC, in its sole discretion to meet its settlement obligations, may purchase or sell Eligible Securities, conduct a Competitive Auctions or auctions, and require Mandatory Close-Outs or Mandatory Buy-ins.²⁰⁶ CMESC may enter into an offsetting repo transaction with a non-Defaulting Member or non-Defaulting User that has the effect of extending outstanding settlement obligations for Repo Transactions or Cash Treasury Transactions by one Business Day, unless applicable law prohibits the non-Defaulting Member or non-Defaulting User from being required to enter into such an offsetting repo transaction.²⁰⁷

CMESC Rules also provide that CMESC will apply financial resources to manage a Participant Default in accordance with its rules and procedures.²⁰⁸ For a Member Default, the margin posted for open transactions in the Defaulting Member's Member Account(s), as well as any other assets of the Defaulting Member held by, pledged to, or otherwise available to CMESC, including the Defaulting Member's Required Guaranty Fund Contribution but excluding any assets posted as margin to any User Account of any User authorized by the Defaulting Member, shall be applied to discharge any losses or liabilities to CMESC from the Member Default.²⁰⁹ Next, CMESC would apply its Corporate Contribution of \$50 million.²¹⁰ Then non-Defaulting Members' Guaranty Fund contributions would be applied with the possible imposition of a Default Assessment.²¹¹ The maximum Default Assessment for each Member with respect to each Cooling Off Period would equal 200% of

²⁰⁴ CMESC Rules, at Rule 1507(c).

²⁰⁵ CMESC Rules, at Rule 1507(c).

²⁰⁶ CMESC Rules, at Rule 1507(e).

²⁰⁷ CMESC Rules, at Rule 1509.

²⁰⁸ CMESC Rules, at Rule 405.

²⁰⁹ CMESC Rules, at Rule 406(a)(iii).

²¹⁰ CMESC Rules, at Rule 406(a)(iii).

²¹¹ CMESC Rules, at Rules 406(a)(iv), (v).

¹⁹³ CMESC Rules, at Rule 404(a).

¹⁹⁴ CMESC Rules, at Rule 404(a).

¹⁹⁵ CMESC Rules, at Rule 404(b).

¹⁹⁶ CMESC Rules, at Rule 404(b).

¹⁹⁷ *See* CMESC Rules, at Rule 402(a) and (b); CMESC Procedures, at Procedure 4-1(a) and (c)(i); *see also* CMESC Rules, at Rule 101 (defining "cover two standard").

a Member's Required Guaranty Fund Contribution then in effect.²¹²

Under CMESC Rules, for an Independent User Default, the first resource applied would be margin posted for open transactions in the Defaulting User's Independent User Account and any other assets of the Independent User held by, pledged to, or otherwise available to CMESC on behalf of that Independent User.²¹³ For a Supported User Default, the first resource applied would be margin posted for open transactions in the Defaulting User's Supported User Account, and if such application doesn't fully discharge the obligations, CMESC may apply any collateral in excess of the margin requirement posted to it for the Supported User of the authorizing Member that such Member has not designated to CMESC as Funded Supported User Margin for any other Supported User Account or Supported User Margin for any other Supported User Account.²¹⁴ Next, in either type of user default, CMESC shall require the authorizing Member to provide funds to discharge the losses and liabilities arising from its authorized User's default.²¹⁵ If the Member fails to do so, CMESC may declare the Member in default and then apply the resources in the default waterfall: CMESC's corporate contribution and non-Defaulting Members' Guaranty Fund Contribution with a possible Default Assessment.²¹⁶

Under CMESC Rules, if CMESC deems it appropriate to obtain financing necessary to satisfy its settlement obligations, CMESC may enter into repo transactions involving Eligible Securities intended to be delivered to a Defaulting Member or Defaulting User and those Qualified Margin Securities of the Defaulting Member or Defaulting User with any market participant so willing, and no Member or User shall take any action to interfere intentionally with such repo transactions.²¹⁷ CMESC may enter master repurchase agreements with an entity or multiple entities, including any depository institution, if CMESC deems it necessary or desirable to obtain and maintain a committed repo financing line.²¹⁸ Each Member is

required to enter a "Capped Liquidity Facility" ("CLF") Master Repurchase Agreement with CMESC on terms substantially similar to those set out by CMESC.²¹⁹ In the event of a Member Default or a User Default and where CMESC's standard sources of liquidity are determined by CMESC to be insufficient or likely to be insufficient to meet CMESC's liquidity needs, CMESC may declare a CLF Event, notify its Members, and enter into one or more CLF Event Transactions with applicable Member(s) of its choosing.²²⁰ CMESC will inform each Member selected to participate in a CLF Event Transaction of the amount, rate and any additional pertinent information.²²¹

Regarding default management, commenters stated that CMESC's corporate contribution to the default waterfall should be more than \$50 million and be sized dynamically.²²² Under CMESC Rule 406, CMESC would contribute \$50 million of its own funds in a default waterfall before applying the guaranty fund contributions of non-defaulting Members. The commenters provided several reasons for believing that the corporate contribution should be increased: (i) the size of the U.S. Treasury market and expected activity of CMESC; (ii) the requirement of a covered clearing agency ("CCA") to maintain additional financial resources to cover a wide range of foreseeable stress scenarios under Rule 17Ad-22(e)(4)(iii); and (iii) the larger size of the "skin-in-the-game" contributions by other CCAs as well as by CMESC clearing affiliates in other markets.²²³ One commenter expressed support for finding a balance between the incentives relevant to a CCA and its participants, suggesting that "skin-in-the-game" could be useful in achieving such balance.²²⁴ The commenters further recommended that CMESC's contribution should be dynamic to incorporate a variety of factors and be able to adjust as its service offerings grow.²²⁵ CMESC responded to these commenters stating its belief that the corporate contribution demonstrates its strong commitment to its offering and risk management practices.²²⁶ CMESC further stated that it is unnecessary to

set a higher amount or utilize a dynamic calculation to comply with Rule 17Ad-22(e)(4).²²⁷

The appropriate amount of a clearing agency's own contribution to its default management process varies depending on the structure of the clearing agency, the characteristics of the assets cleared, and the markets served by the clearing agency, and registered clearing agencies have taken different approaches to applying their own resources to the default management process. The Commission does not require that a CCA have "skin-in-the-game" to address or allocate losses, and Rule 17Ad-22(e)(4)(iii), which was cited by commenters to support their argument for greater "skin-in-the-game," does not require any particular amount of "skin-in-the-game."²²⁸ Previously, the Commission has considered commenters' views regarding requirements for "skin-in-the-game," stating that such new requirements can help successfully manage the divergent incentives of a CCA's owners and participants and could be appropriate in the future.²²⁹ However, as the Commission has also stated, it is appropriate to provide a CCA with flexibility, subject to its responsibilities as a self-regulatory organizations ("SRO") under the Exchange Act, to structure its default management processes to take into account the particulars of its financial resources, ownership structures, and risk management frameworks.²³⁰ Furthermore, the proper alignment of incentives is an important element of a CCA's risk management practices, and "skin-in-the-game" may play a role in those risk management practices in many instances but in other instances may not be essential to a governance framework.²³¹ CMESC is afforded this flexibility under the CCA regulatory framework and has the discretion to size its corporate contribution subject to its obligations and responsibilities as an SRO under the Exchange Act. Setting aside the size of the corporation contribution CMESC determines to

²²⁷ *Id.*

²²⁸ See Covered Clearing Agency Resilience and Recovery and Orderly Wind-Down Plans, Release No. 34-101446 (Oct. 25, 2024), 89 FR 91000, 91037 (Nov. 18, 2024) ("RWP Adopting Release"); CCA Standards Adopting Release, *supra* note 6, 81 FR at 70805-06.

²²⁹ See RWP Adopting Release, *supra* note 228, 89 FR at 91037; Clearing Agency Governance and Conflicts of Interest, Release No. 34-98959 (Nov. 16, 2023), 88 FR 84454, 84504 (Dec. 5, 2023); CCA Standards Adopting Release, *supra* note 6, 81 FR at 70806.

²³⁰ See CCA Standards Adopting Release, *supra* note 6, 81 FR at 70806.

²³¹ *See id.*

²¹² CMESC Rules, at Rule 402(c). Should a Member submit a voluntary withdrawal during the Cooling Off Period, the Member must still satisfy its aggregate maximum contribution in effect at the commencement of the Cooling Off Period. CMESC Rules, at Rule 413(c). CMESC retains discretion to authorize additional contributions during the Cooling Off Period. CMESC Rules, at Rule 413(d).

²¹³ CMESC Rules, at Rule 406(b)(ii)(A).

²¹⁴ CMESC Rules, at Rule 406(b)(ii)(B).

²¹⁵ CMESC Rules, at Rule 406(b)(iii).

²¹⁶ CMESC Rules, at Rule 406(b)(iii).

²¹⁷ CMESC Rules, at Rule 408.

²¹⁸ CMESC Rules, at Rule 409.

²¹⁹ CMESC Rules, at Rule 410.

²²⁰ CMESC Rules, at Rule 409.

²²¹ CMESC Rules, at Rule 410(d).

²²² SIFMA & AMG I at 15; FIA at 10. A covered clearing agency's contribution of its own funds to its default waterfall is often referred to as "skin in the game." See CCA Standards Adopting Release, *supra* note 6, 81 FR at 70805.

²²³ SIFMA & AMG I at 15-16; FIA at 10.

²²⁴ SIFMA & AMG I at 15.

²²⁵ *Id.* at 16; FIA at 10.

²²⁶ CMESC Response Letter at 7.

include in its default waterfall, CMESC is required by Rule 17Ad-22(e)(4)(iii) to maintain written policies and procedures reasonably designed to maintain financial resources to cover a wide range of foreseeable stress scenarios, including the default of the largest participant family in extreme but plausible market conditions.²³² For the reasons previously discussed in Part III.E.2.c), CMESC Rules are consistent with the requirements of Rule 17Ad-22(e)(4)(iii).

Two commenters requested that CMESC obtain legal opinions relating to the default management aspects of CMESC's margin framework (*i.e.*, confirming the bankruptcy remoteness of a participant's margin held by CMESC).²³³ CMESC responded that it believes its rules are "built on a well-founded, transparent and enforceable legal basis, consistent with Rule 17Ad-22(e)." ²³⁴ Regarding legal opinions, the Commission has previously stated that "[b]ecause the appropriate use of legal opinions will vary on a case-by-case basis, the Commission does not believe it is appropriate to modify Rule 17Ad-22(e)(1) to include a specific requirement for legal opinions addressing particular matters." ²³⁵ Accordingly, CMESC's response is consistent with Commission rules.

In addition, with respect to certain commenters' views regarding the costs of default management, Rule 17Ad-22(e)(23)(ii) under the Exchange Act requires covered clearing agencies to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.²³⁶ Two commenters sought clarity regarding whether CMESC's rules addressing the costs associated with default management were consistent with the requirements in Rule 17Ad-22(e)(23)(ii).²³⁷ One commenter requested additional clarity regarding CMESC's assessment of Member obligations under default management rules to ensure its compliance with Rule 17Ad-22(e)(23)(ii).²³⁸ First, the commenter stated a concern that, after a voluntary

withdrawal from CMESC, a resigning Member's potential obligation to CMESC in respect of the Guaranty Fund could extend over a period of unknown duration.²³⁹ The commenter suggested that CMESC specify when withdrawals become effective to help CMESC comply with Rule 17Ad-22(e)(23)(ii).²⁴⁰ Next, the commenter requested that CMESC include more specific information about its assessments for its CLF after a Member default.²⁴¹ Citing the lack of clarity about CMESC's CLF calculations, the commenter stated that further information would be consistent with CMESC's obligations under Rule 17Ad-22(e)(23)(ii).²⁴²

Another commenter cited Rule 17Ad-22(e)(23)(ii) in its request that CMESC provide participants with more specific information about its Members' required contributions under its CLF.²⁴³ Specifically, the commenter stated that "[a]t a minimum, CMESC should provide significantly more clarity" on how its CLF will work.²⁴⁴ The commenter stated that CMESC must provide this information to comply with Rule 17Ad-22(e)(23)(ii) so its participants may be able to "identify and evaluate the risks, fees, and other material costs they incur by participating in CMESC's clearing and settlement services." ²⁴⁵

CMESC submitted a response to these commenters regarding the sufficiency of information provided for its default management rules (specifically, regarding costs to Members: (i) under the CLF; and (ii) after submitting a Member Withdrawal).²⁴⁶ Regarding requests for more specific information about its CLF, CMESC stated that it designed its CLF to meet the requirements of Rule 17Ad-22(e)(7).²⁴⁷ CMESC also explained that, while it believes its rules are consistent with Rule 17Ad-22(e)(23)(ii), CMESC recognizes the importance of continued engagement with market participants on the operations of its CLF.²⁴⁸ Regarding requests for more specific information about Members' obligations to continue Guaranty Fund contributions and Default Assessments after submitting a

Member Withdrawal, CMESC stated that it: (i) "will continue to consider them;" and (ii) "not[es] that they are unrelated to whether CMESC's default management rules are consistent with the Exchange Act and the rules and regulations thereunder, which they are." ²⁴⁹

Separate from Commission rules regarding default management, Rule 17Ad-22(e)(23)(ii) requires a covered clearing agency to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency,²⁵⁰ but it allows a covered clearing agency to consider its unique characteristics and circumstances when developing its written policies and procedures (including those addressing the sufficiency of information it provides to its participants about the costs associated with default management).²⁵¹ Given CMESC's approach to risk management as set forth in its Rules and Procedures, as described above, CMESC's approach is consistent with Rule 17Ad-22(e)(23)(ii).

F. Participant Discipline

1. Statutory Standard and Analysis: Section 17A(b)(3)(G)

Section 17A(b)(3)(G) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency provide that (subject to any rule or order of the Commission pursuant to Sections 17(d) or 19(g)(2) of the Exchange Act) its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.

With respect to discipline and sanctions, CMESC Rules provide that CMESC may discipline any Member or User for a violation of any provision of CMESC Rules or Procedures, such as Member's or User's agreements with CMESC, or for any error, delay, or other conduct detrimental to CMESC, or for not providing adequate facilities for such Member's or User's business with CMESC, by expulsion, suspension, limitation of or restriction on activities, functions, and operations, fine or censure, or any other appropriate

²³² See 17 CFR 240.17Ad-22(e)(4)(iii).

²³³ See SIFMA & AMG I at 4; FIA at 4. These requests for legal opinions relate to CMESC's ability to safeguard securities and funds for which it is responsible, which implicate the Commission's required determination in Section 17A(b)(3)(F) of the Exchange Act. See *supra* note 24 and accompanying text.

²³⁴ CMESC at 9-10.

²³⁵ See CCA Standards Adopting Release, *supra* note 6, 81 FR at 70801-02.

²³⁶ 17 CFR 240.17Ad-22(e)(23)(ii).

²³⁷ FIA at 6-7; SIFMA & AMG I at 14.

²³⁸ FIA at 5-6, 14.

²³⁹ See *id.* at 5-6; see also SIFMA & AMG I at 6 (further noting that a voluntary withdrawal is permitted with ten business days' notice, but that withdrawals are not effective until they have been accepted by CMESC).

²⁴⁰ See FIA at 6.

²⁴¹ See *id.* at 6-7.

²⁴² See *id.*

²⁴³ See SIFMA & AMG I at 14.

²⁴⁴ See *id.*

²⁴⁵ See SIFMA & AMG I at 14.

²⁴⁶ See CMESC Response Letter.

²⁴⁷ *Id.* at 5.

²⁴⁸ *Id.*

²⁴⁹ *Id.* at 6.

²⁵⁰ 17 CFR 240.17Ad-22(e)(23)(ii).

²⁵¹ CCA Standards Adopting Release, *supra* note 6, 81 FR at 70800 (explaining that these considerations may include ownership and governance structures, effect on direct and indirect participants, participant base, markets served, and the risks inherent in products cleared).

sanction.²⁵² CMESC Rules further provide that it may impose a fine, not to exceed \$2,500, on any Member or User for any violation of a CMESC Rule or Procedure that CMESC determines is minor in nature in lieu of commencing a disciplinary proceeding.²⁵³

CMESC has procedures for enforcing rules and disciplining Members and Users that are consistent with the requirements of the Exchange Act. CMESC's rules provide it with authority to discipline Members and Users for rule violations and to impose each of the sanctions enumerated in the Exchange Act. Accordingly, the Commission determines that CMESC Rules provide that its participants shall be appropriately disciplined for violation of any provision of the rules consistent with the requirements of Section 17A(b)(3)(G) of the Exchange Act.

2. Statutory Standard and Analysis: Section 17A(b)(3)(H)

Section 17A(b)(3)(H) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency, in general, provide a fair procedure with respect to the disciplining of participants, the denial of participation to any persons seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency.²⁵⁴

CMESC Rules state that CMESC shall notify a Member or User in writing of the specific charges against such Member or User and its right to a hearing before CMESC imposes any disciplinary sanction on a Member or User.²⁵⁵ In addition, under its rules, CMESC shall notify a Member, User, or other person in writing of any adverse action to be taken, the specific grounds for the action under consideration, and such Member's, User's or other person's right to a hearing for any of the following adverse actions: (i) disapproving an application for Member or User status (including the disapproval of an application for Member or User status with respect to a specific Eligible Securities Transaction for which CMESC offers clearing services); or (ii) taking any other action which prohibits or limits access by a Member, User, or other person to

services offered by CMESC (other than imposing a disciplinary sanction).²⁵⁶

Pursuant to CMESC Rules, the Member or User receiving a notice of disciplinary charges shall have fifteen Business Days after service of such notice to file a written answer thereto.²⁵⁷ The answer shall be filed with the Secretary of CMESC, and shall include a request for a hearing.²⁵⁸ The answer shall specifically admit or deny each allegation contained in the notice of charges, and the Member or User, as Respondent,²⁵⁹ shall be deemed to have admitted any allegation not specifically denied.²⁶⁰ With respect to a disciplinary action or adverse action to be taken against a Respondent, if an answer has been filed in a timely fashion, then pursuant to its Rules CMESC shall (unless the Respondent and CMESC have stipulated to the imposition of an agreed-upon sanction) schedule a hearing on the noticed charges.²⁶¹ Under CMESC Rules, a hearing panel ("Hearing Panel") will be composed of three disinterested members of the Board of Directors appointed for the purpose by the Chairman of the Board of Directors.²⁶² CMESC's Head of Legal, or their designee, shall serve as counsel to the Hearing Panel.²⁶³ The Respondent or Interested Person shall be given not less than three days advance notice of the place and time of the hearing.²⁶⁴ At the hearing, the Respondent or Interested Person shall be afforded the opportunity to be heard and to present evidence on its behalf and may be represented by counsel.²⁶⁵ CMESC will be represented by staff or a designee of CMESC.²⁶⁶ Upon request, the Hearing Panel is required to advise the Respondent of its decision and the grounds upon which its decision is based with a written statement.²⁶⁷ If the decision imposes a disciplinary sanction, the written statement shall set forth: (i) any act or practice in which the Respondent has been found to have been engaged or omitted; (ii) the specific provisions of the Rules or Procedures of

CMESC which any such act, practice, or omission has been deemed to violate; and (iii) the sanction imposed and the reasons therefor.²⁶⁸ Pursuant to its Rules, if CMESC imposes a final disciplinary sanction or any other adverse action on any Member or User, CMESC shall promptly file notice thereof with the Commission and the appropriate regulatory agency for such Member, User, or other person (if other than the Commission).²⁶⁹

CMESC Rules provide that, prior to the issuance of the written statement of decision, the Respondent and CMESC may agree to a settlement resolving the disciplinary action or adverse action.²⁷⁰ The proposed settlement must be submitted to a Hearing Panel, and must include an agreed stipulation of facts and a specified sanction or adverse action.²⁷¹ Where the Hearing Panel accepts the proposed settlement, it shall promptly issue a decision consistent with the terms of such settlement.²⁷² Where the Hearing Panel rejects the proposed settlement, it shall notify the parties and the matter shall proceed as if the offer had not been made, and the offer and all documents relating thereto shall not become part of the record.²⁷³ The decision of the Hearing Panel to accept or reject a proposed settlement shall be final and not subject to appeal.²⁷⁴

Any fine imposed pursuant to CMESC Rules and not contested shall not be publicly reported, except as may be required by Rule 19d-1 under the Exchange Act or as may be required by any other regulatory authority.²⁷⁵ In any action taken by CMESC pursuant to CMESC Rules, the person against whom a fine is imposed shall be served with a written statement signed by an authorized officer of CMESC, setting forth: (i) the CMESC Rule or Rules alleged to have been violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each such violation; and (iv) the date such determination becomes final and such fines become due and payable, such date to be not less than fifteen business

²⁵² CMESC Rules, at Rule 1001(b).

²⁵³ CMESC Rules, at Rule 1011(a).

²⁵⁴ Section 17A(b)(3)(H) of the Exchange Act also states that the rules of the clearing agency must be in accordance with the provisions of Section 17A(b)(5) of the Exchange Act.

²⁵⁵ CMESC Rules, at Rule 1002(a).

²⁵⁶ CMESC Rules, at Rule 1002(b).

²⁵⁷ CMESC Rules, at Rule 1003.

²⁵⁸ CMESC Rules, at Rule 1003.

²⁵⁹ "Respondent" refers to the Member or User receiving a notice of disciplinary charges under CMESC Rules, Rule 1002. CMESC Rules, at Rule 1003(a).

²⁶⁰ CMESC Rules, at Rule 1003.

²⁶¹ CMESC Rules, at Rule 1004(a).

²⁶² CMESC Rules, at Rule 1004(b).

²⁶³ CMESC Rules, at Rule 1004(b).

²⁶⁴ CMESC Rules, at Rule 1004(c). An "Interested Person" means a Member, User, or other person receiving notice of an adverse action by CMESC. CMESC Rules, at Rule 1003(b).

²⁶⁵ CMESC Rules, at Rule 1004(d).

²⁶⁶ CMESC Rules, at Rule 1004(d).

²⁶⁷ CMESC Rules, at Rule 1005(a).

²⁶⁸ CMESC Rules, at Rule 1005(b).

²⁶⁹ CMESC Rules, at Rule 1013.

²⁷⁰ CMESC Rules, at Rule 1006.

²⁷¹ CMESC Rules, at Rule 1006.

²⁷² CMESC Rules, at Rule 1006.

²⁷³ CMESC Rules, at Rule 1006.

²⁷⁴ CMESC Rules, at Rule 1006. In addition, CMESC may at any time establish procedures for a hearing not otherwise set forth in CMESC Rules with respect to any action or proposed action of CMESC so long as the Member, User, or other person is given notice and an opportunity to be heard and there is a record of the decision along with the reasons for that decision. CMESC Rules, at Rule 1009.

²⁷⁵ CMESC Rules, at Rule 1011(a).

days after the date of service of the written statement.²⁷⁶ If any person against whom a fine is imposed pursuant to CMESC Rules pays the fine, such payment shall be deemed a waiver by such person of such person's right to a disciplinary proceeding and any review of the matter by the Board.²⁷⁷ Any person against whom a fine is imposed pursuant to CMESC Rule 1011 may contest CMESC's determination by filing a written answer at which point the matter shall become a disciplinary proceeding.²⁷⁸ In any such disciplinary proceeding, if the Hearing Panel determines that the Member or User is found to have violated CMESC's Rules or Procedures as charged, the Hearing Panel shall also determine if the rule violation is minor in nature.²⁷⁹ If the Hearing Panel determines that the rule violation is minor, then the Panel may only impose sanctions in accordance with the Rules.²⁸⁰ If the Hearing Panel determines that the rule violation is not minor, then it is free to impose any disciplinary sanctions it deems appropriate.²⁸¹

CMESC Rules provide any aggrieved party the right to request an appeal to the full Board of Directors from any decision of a Hearing Panel of CMESC.²⁸² Appeals shall be made by filing a written notice of a request for an appeal with the Secretary of CMESC within five business days after notification by CMESC of the decision from which the request for an appeal is made.²⁸³ The notice shall state with particularity the decision complained of, the appellant's reasons for taking exception to the decision, and the relief sought.²⁸⁴ The Board shall determine whether to grant or deny any request for an appeal filed with CMESC.²⁸⁵ If the Board chooses to grant a request for an appeal, the Board shall affirm, reverse, modify, or remand for further consideration the Hearing Panel's decision within ten business days after the Board receives the notice of appeal.²⁸⁶ The Board in its discretion may determine to open the record for introduction of evidence or to provide the parties with the opportunity for a further hearing.²⁸⁷ If the Board determines to provide for a further

hearing, the Board shall provide notice to the parties of the place and time of the hearing at the same time as it provides notice that the Hearing Panel decision is being reviewed by the Board.²⁸⁸ Unless the Board opens the record for the introduction of evidence or to hear argument, the Board's review shall be upon the record as certified to the Board by the Secretary of CMESC.²⁸⁹ The Board's decision shall be made in writing and shall state the reasons for its conclusions.²⁹⁰ Copies of the Board's decisions shall be furnished to the appellant, the Commission, and the appropriate regulatory agency for the appellant (if other than the Commission).²⁹¹ Each notice of appeal, together with the record of the appeal and any decision shall be filed in the permanent records of CMESC.²⁹²

As described, CMESC has established procedures to ensure that any Member or User assessed with a rule violation receives notice of the alleged violation, and is afforded an opportunity to contest the allegations, including by requesting a hearing at which the participant may be represented by counsel. CMESC's procedures address disciplining of participants, denial of participation, and prohibitions or limitations imposed by the clearing agency with respect to access to services offered by the clearing agency. The Commission therefore determines that CMESC Rules provide a fair procedure consistent with Section 17A(b)(3)(H) of the Exchange Act.

G. Burden on Competition

1. Statutory Standard: Section 17A(b)(3)(I)

Section 17A(b)(3)(I) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

2. Summary of Application and Analysis

As discussed in Part III.B, CMESC's rules permit all of the participant categories required by Section 17A(b)(3)(B) of the Exchange Act to be Members or Users. In addition, as contemplated by Section 17A(b)(4)(B), CMESC's Rules state that CMESC may deny participation, or condition participation, based on: (i) general

operational, and, for Members, financial requirements; (ii) minimum financial responsibility standards (specific to business type) for Members and Users; and (iii) the existence and maintenance of policies and procedures addressing minimum operational, and, for Members, risk monitoring requirements.²⁹³

One commenter generally discussed the topic of competition, requesting clarity about CMESC's "Trade Submission Requirement."²⁹⁴ This commenter asked CMESC to clarify that: (i) its rules do not require a participant to become a participant of a different clearing agency if CMESC rejects any trade submitted by that participant due to "operational or clerical errors;" (ii) in conjunction with the Commission, that CMESC should explicitly clarify that, "in general, the Commission's trade submission rule does not impose an obligation on U.S. Treasury clearing agencies to require direct participants to become participants of a different clearing agency in order to ensure they have the ability to clear the full scope of Eligible Secondary Market Transactions offered by all U.S. Treasury clearing agencies;" and (iii) in reference to CMESC's Rule 202, that the Commission "should make clear that any trade submission requirement for new types of Eligible Secondary Market Transactions will be subject to procedural protections, including notice

²⁹³ See CMESC Rules, at Rules 302, 306, 307.

²⁹⁴ Letter from Katherine Darras, General Counsel, International Swaps and Derivatives Association, dated Mar. 10, 2025 ("ISDA I"), at 7. While not directly referencing either Section 17A(b)(3)(I) of the Exchange Act or competition, another comment addressed participation in CMESC by a specific type of entity registered with the Commodity Futures Trading Commission ("CFTC") (*i.e.*, futures commission merchants ("FCMs")) and by non-U.S. banks. FIA at 1, 14–15. Citing Rule 17d–22(e)(18)(iv)(C), the commenter requests CMESC modify the requirements and responsibilities of participation for the benefit of FCMs and non-U.S. banks (*e.g.*, regarding regulatory capital treatment and risk management). FIA at 1, 2 n.6, 3–4, 10, 15, 20. CMESC responded to this comment, stating that its rules comply with the Exchange Act and the rules and regulations thereunder regarding risk management and that these requests are outside the scope of the Application. CME Response Letter at 6, 9. The changes sought by the commenter are not required by Rule 17Ad–22(e)(18)(iv)(C), because the rule does not require that a CCA provide particular access models. Treasury Clearing Adopting Release, *supra* note 81, 89 FR at 2757–58. However, a CCA in the U.S. Treasury market generally should seek to provide access in as flexible a means as possible, consistent with its responsibility to provide sound risk management and comply with other provisions of the Exchange Act, the Covered Clearing Agency Standards, and other applicable regulatory requirements, and it generally should consider a wide variety of appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants. *Id.* at 2760.

²⁷⁶ CMESC Rules, at Rule 1011(b).

²⁷⁷ CMESC Rules, at Rule 1011(c).

²⁷⁸ CMESC Rules, at Rule 1011(d).

²⁷⁹ CMESC Rules, at Rule 1011(d).

²⁸⁰ CMESC Rules, at Rule 1011(d).

²⁸¹ CMESC Rules, at Rule 1011(d).

²⁸² CMESC Rules, at Rule 1101.

²⁸³ CMESC Rules, at Rule 1102(a).

²⁸⁴ CMESC Rules, at Rule 1102(a).

²⁸⁵ CMESC Rules, at Rule 1102(b).

²⁸⁶ CMESC Rules, at Rule 1102(c).

²⁸⁷ CMESC Rules, at Rule 1103(a).

²⁸⁸ CMESC Rules, at Rule 1103(a).

²⁸⁹ CMESC Rules, at Rule 1103(a).

²⁹⁰ CMESC Rules, at Rule 1103(b).

²⁹¹ CMESC Rules, at Rule 1103(c).

²⁹² CMESC Rules, at Rule 1104(b).

by the clearing agency, public comment and delayed effectiveness.”²⁹⁵

CMESC submitted a response to this commenter.²⁹⁶ In its response, CMESC explained that its rules do not require participation in another clearing agency if CMESC rejects any transaction submitted for clearing;²⁹⁷ rather, CMESC explained that the Member may, for example, correct and resubmit the trade to CMESC.²⁹⁸ Additionally, CMESC stated that only the Commission would have the ability to delay the effective date of any future revision to the Commission’s “Trade Submission Requirement,” and therefore the request was “beyond the scope of [CMESC’s Application].”²⁹⁹ The Commission agrees with CMESC’s responses to this commenter; specifically: (i) that neither CMESC Rules nor Commission rules require a clearing participant to become a participant at multiple clearing agencies for U.S. Treasury securities; and (ii) that CMESC does not have authority to delay the implementation of any future Commission rules (and that any discussion thereof is outside of CMESC’s Application for registration).³⁰⁰ Any futures changes to CMESC Rules that govern Eligible Securities Transactions (e.g., Rule 202, “Eligible Secondary Market Transactions”) must comply with the rule filing requirements under Section 19(b) of the Exchange Act and Rule 19b-4 thereunder.³⁰¹

²⁹⁵ ISDA I at 8; *see also* CMESC Rules, at Rule 202(a) (defining an “Eligible Secondary Market Transaction” as “an ‘eligible secondary market transaction’ as that term is defined in Rule 17[A]d-22(a) under the [Exchange Act]”); 17 CFR 240.17ad-22(a) (defining “Eligible secondary market transaction”).

²⁹⁶ *See* CMESC Response Letter.

²⁹⁷ CMESC Response Letter at 4 (“Nor does any CMESC Rule or Procedure impose requirements on Members that would operate in a manner to compel them to belong to another clearing agency for any reason, including if CMESC were to reject any transaction submitted for clearing, in which scenario the Member would control how it should comply with its obligation.”).

²⁹⁸ CMESC Response Letter at 4 (“The Member could resubmit the transaction to CMESC in accordance with CMESC’s Rules, arrange for the transaction to be cleared at another covered clearing agency—which does not mean the Member must be a direct participant of that clearing agency as other indirect means of access may be available—or take other action to ensure compliance with the clearing obligation”).

²⁹⁹ CMESC Response Letter at 4.

³⁰⁰ The commenter also requests that the Transaction Submission Requirement align with the CFTC framework for mandatory clearing, which is outside the scope of the Commission’s consideration of CMESC’s Application for registration as a clearing agency. *See* FIA at 14.

³⁰¹ *See* 15 U.S.C. 78s(b); 17 CFR 240.19b-4. One commenter, FIA at 16-17, requested that CMESC explain how it might establish or support a cross-margining arrangement between CMESC and its

More generally, in the context of establishing standards for participation, CMESC’s rules may impact competition among market participants by restricting access of its clearing services for market participants unable to meet its standards for participation; however, such a burden on competition can be in furtherance of, and consistent with, the Exchange Act, including Sections 17A(b)(3)(B), 17A(b)(4)(B), and 17A(b)(3)(F) thereof.³⁰² Consistent with Section 17A(b)(4)(B) of the Exchange Act, for example, CMESC may deny participation or condition participation based on its rules’ standards for “financial responsibility, operational capability, experience, and competence.”³⁰³ As discussed in Part III.B, CMESC’s participation requirements distinguish among participant types to allow CMESC to manage the different risks presented by each participant type. Specifically, participation requirements that establish financial and operational competency standards tailored to each entity type (e.g., different financial standards for broker-dealers than for banks, owing to the different characteristics of these entity types) and by participation category (e.g., different operational standards for Members than for Users, owing to the different ways in which these entity types interact directly with the clearing agency) help ensure that CMESC Rules “are designed to sufficiently protect [CMESC] from risk associated with failure to meet those competencies.”³⁰⁴ Because such participation requirements enable CMESC to manage, mitigate, and, where possible, reduce the risk it faces in its capacity as a CCP, the Commission determines that CMESC’s rules are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.³⁰⁵ Similarly, should CMESC’s financial and operational competency standards impact competition, these standards are in the furtherance of assuring CMESC’s safeguarding of securities and funds in CMESC’s custody or control. Therefore, the Commission determines that CMESC’s rules do not impose any

Chicago Mercantile Exchange, Inc., its derivatives clearing organization affiliate. Such arrangement is not included as part of CMESC’s Application, and does not bear on any Commission rule requirement or, more generally, the standard for registration as a clearing agency.

³⁰² 15 U.S.C. 78q-1(b)(3)(B), (b)(4)(B), (b)(3)(F).

³⁰³ 15 U.S.C. 78q-1(b)(4)(B).

³⁰⁴ *See* FICC Registration, *supra* note 13, 78 FR at 39031.

³⁰⁵ 15 U.S.C. 78q-1(b)(3)(F).

burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.³⁰⁶ Additionally, CMESC’s participation standards may provide a new way to access clearing for transactions in U.S. Treasury securities for market participants that do not currently participate in a registered clearing agency for U.S. Treasury securities.³⁰⁷ In expanding such access to the national system for clearance and settlement, CMESC’s participation rules may present new opportunities for its Members and Users to gain efficiencies from the cross-margining of their transactions, either within the market for U.S. Treasury securities specifically or in other markets where the use of U.S. Treasury securities as collateral helps facilitate the risk management that supports clearance and functions. Therefore, the Commission determines, pursuant to Section 17A(b)(3)(F) of the Exchange Act, that the CMESC Application fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and removes impediments to, and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.³⁰⁸

IV. Conclusion

For the reasons discussed above, the Commission finds that CMESC satisfies the requirements for registration as a clearing agency, including those requirements set forth in Section 17A of the Exchange Act and Commission rules and regulations thereunder.³⁰⁹

It is hereby ordered that the application for registration as a clearing agency filed by CME Securities Clearing, Inc. (File No. 600-44) pursuant to Sections 17A and 19(a) of the Exchange Act be, and hereby is, *approved*.

By the Commission.

Vanessa A. Countryman,
Secretary.

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³⁰⁶ 15 U.S.C. 78q-1(b)(3)(F).

³⁰⁷ Specifically, a firm may be motivated to enter the U.S. Treasury market: (i) as a User, if that firm would be unable to become a Member (and would be unable to access CMESC’s clearance and settlement services if CMESC did not allow User participation); and (ii) as a Member, if that firm sought the business of potential Users who require a Member’s sponsorship to access CMESC’s clearance and settlement services.

³⁰⁸ 15 U.S.C. 78q-1(b)(3)(F).

³⁰⁹ 15 U.S.C. 78q-1(b)(3).