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October 7, 2022

VIA ELECTRONIC TRANSMISSION
rule-comments@sec.gov

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Clearing Agency Governance and Conflicts of Interest (Release No. 34-95431; File Number S7-21-22)

Dear Ms. Countryman:

The Depository Trust & Clearing Corporation ("DTCC"), together with its registered clearing agency subsidiaries, The Depository Trust Company ("DTC"), Fixed Income Clearing Corporation ("FICC"), and National Securities Clearing Corporation ("NSCC"), appreciates the opportunity to provide comments to the U.S. Securities and Exchange Commission ("Commission") regarding proposed rules for registered clearing agency governance and conflicts of interest ("Proposal").[1] Given the critical role registered clearing agencies play for the U.S. securities markets and financial markets more broadly, DTCC appreciates the importance of promoting effective and transparent governance for such entities.

Introduction

DTCC's common stock is owned by the financial institutions that are participants of its registered clearing agency subsidiaries: DTC, FICC, and NSCC. NSCC and FICC provide central counterparty ("CCP") services for multiple asset classes, including U.S. equities, corporate and municipal bonds, and government and mortgage-backed securities. The Government Securities Division of FICC is the leading provider of trade comparison, netting and settlement for the U.S. Government securities marketplace. The other division of FICC is the Mortgage-Backed Securities Division, which provides CCP services for mortgage-backed securities, including To-Be-Announced securities. NSCC provides clearing, settlement, risk management, and CCP services for trades involving equities, corporate and municipal debt, exchange-traded funds, and unit investment trusts in the U.S. As a central securities depository, DTC provides settlement services for virtually all equity, corporate and municipal debt trades,

[1] Securities Exchange Act Release No. 95431 (August 8, 2022), 87 FR 51812 (August 23, 2022) (S7-21-22) ("Proposing Release").

and money market instruments in the U.S. Each of these registered clearing agencies has been designated as a systemically important financial market utility ("SIFMU") by the U.S. Financial Stability Oversight Council pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

All participant owners of DTCC's registered clearing agencies commit capital as owners, pay fees for services and ultimately benefit from the safeguards, efficiencies and risk mitigation that the clearing agencies provide. This ownership model effectively aligns interests among users, owners, the board of directors and management, while fostering capital efficiency and delivering cost-effective operating and processing solutions. DTCC's board is currently comprised of directors, a majority of which are representatives of participants in the registered clearing agency subsidiaries, including international broker-dealers, custodian and clearing banks and investment institutions. Individuals are nominated for election as directors based on their ability to represent the clearing agencies' diverse client bases, including direct and indirect users across the global financial services industry. Directors serve on a variety of board committees with responsibility to oversee all aspects of clearing agency operations, including the management of risk. There are also directors who are not affiliated with any participant, but who have backgrounds in financial services and provide independent perspective.

Executive Summary

As explained further in the Discussion section below, DTCC respectfully offers the following comments to the Proposal. We also offer more succinct responses to the specific requests for comment in the Proposal in the attached Appendix.

1. We generally believe that the requirements of Proposed Rules 17Ad-25(b), (e) and (f) are appropriately designed to address the Commission's policy goals regarding board and board committee composition, as well as director independence.

2. We generally believe that the requirements of Proposed Rule 17Ad-25(c) for the establishment and function of the nominating committee are appropriately designed to address the Commission's policy goals.

3. We support most of the proposed requirements in Proposed Rule 17Ad-25(d) regarding the establishment and function of a board-level risk management committee. However, we have two concerns with the Proposal that we believe the Commission should address in adopting a final rule. First, we believe that the Commission should allow registered clearing agency boards flexibility in establishing how a risk committee "assists" (as such term is used in the Proposed Rule) the full board in overseeing risk management. In practice, this means that the proposed requirements should allow for instances where the board risk committee may directly satisfy the obligations of the Proposed Rule pursuant to delegated authority from the board. Second, we believe that the Commission should take an outcomes-based approach to the proposed "reconstitution" requirement. In practice, this would mean that a registered clearing agency could use reasonably-designed policies and procedures that require periodic evaluation of whether the risk committee membership and structure continues to provide current, diverse and expert risk management oversight that supports the safety and efficiency of the clearing agency.

4. We generally believe that the requirements of Proposed Rules 17Ad-25(g) and (h) regarding conflicts of interest are appropriately designed to address the need for registered clearing agencies to mitigate conflicts of interest effectively.

5. We have significant concerns regarding the proposed requirements for board oversight of providers of critical services ("CSPs") set forth in Proposed Rule 17Ad-25(i), and the scope of the CSP definition set forth in Proposed Rule 17Ad-25(a). While we support the Commission's overall policy objectives, we believe that the proposed requirements and definition are overly broad, could conflict with existing requirements and standards other regulators have applied in respect of CSPs, confuse the distinction between the roles of the board and management, and will deter otherwise qualified individuals from serving as registered clearing agency board directors. We also believe the Proposal significantly underestimates the burdens and costs of these requirements.

6. We have certain concerns regarding the scope of the proposed requirements for solicitation and consideration of stakeholder viewpoints set forth in Proposed Rule 17Ad-25(j). Notably, we believe that scoping the requirements to material changes in the "governance and operations" of a registered clearing agency is overly broad with the likely result that registered clearing agency governance will become less dynamic and responsive to changes and risks in the markets they serve. We therefore recommend that the Commission change the scope of the proposed requirements to "risk management" instead of "governance and operations."

Discussion

DTCC appreciates the Proposal's objective of ensuring that registered clearing agency governance effectively mitigates conflicts of interest, promotes the fair representation of owners, identifies responsibilities of the board (and therefore, by implication, management), and increases transparency for stakeholders. Many of the policy outcomes sought by the Proposal are consistent with our own experiences in operating registered clearing agencies that are ultimately owned and governed by their participants. Achieving the benefits the Commission seeks in the Proposal for registered clearing agencies depends not only on ensuring that governance reflects the proper alignment, accountability, and transparency, but also that such governance may be allowed to perform its functions dynamically and flexibly in response to the particular aspects of the market serviced by the clearing agency. We appreciate those aspects of the Proposal that balance effective governance with general principles of dynamism and flexibility, and any concerns or critiques we raise herein with respect to other aspects of the Proposal are informed by this same perspective.

Board Composition, Independence and Conflicts of Interest

DTCC supports the Proposal's requirements around registered clearing agency board composition, director independence, and conflicts of interest as contained in proposed Rules 17Ad-25(b), (e) and (f). We believe that the proposed requirements in sub-parts (b) and (f) in particular are based upon a flexible and well-understood reasonable policies and procedures framework that, when combined with a materiality standard and a broad consideration of facts and circumstances, should be effective in helping registered clearing agencies flexibly achieve

the Commission's desired policy outcomes without being overly prescriptive.[2] DTCC also agrees with the Proposal's statement that proposed Rules 17Ad-25(a) and (b)(2) could provide registered clearing agencies with a broad pool of potential independent director candidates, including participant employees, so long as other aspects of the proposed Rules are satisfied.[3] In DTCC's experience, allowing for the potential inclusion of participant employees as independent directors on registered clearing agency boards has several benefits: industry expertise, strong alignment with the risk management and operational integrity of the registered clearing agency, and diverse perspectives. Therefore, DTCC believes that the Proposal has distilled and applied the appropriate factors for evaluating director independence and does not believe that the Proposal needs to be modified further in this regard.

DTCC also applauds the approach the Proposal applies to the question of independent director representation within a registered clearing agency's board composition and agrees strongly with the following principle acknowledged in the Proposing Release: when a clearing agency chooses to mutualize the risk it faces among its owners and participants, it may find a closer alignment of incentives among owners and participants because both owners and participants would bear losses associated with a failure of the clearing agency.[4] DTCC believes that the Commission has correctly incorporated this principle in proposed Rule 17Ad-25(b)(1), which provides that those registered clearing agencies whose voting rights are majority-held either directly or indirectly by participants should maintain a board where at least 34 percent of the members of the board must be independent. DTCC also notes that this minimum requirement is comparable to minimum independence requirements in other jurisdictions that do not take into account the specific question of whether a clearing agency is participant owned.[5] Therefore, DTCC recommends that the Commission adopt the proposed requirements around board composition without further modification.

DTCC generally finds that the requirements laid out in proposed Rules 17Ad-25(g) and (h) regarding conflicts of interest also are appropriately designed, and therefore recommends that they be adopted without further modification. As with the requirements around board governance and independence, DTCC appreciates the Commission's decision to apply a flexible and well-understood reasonable policies and procedures framework that avoids prescribing the specific approach each registered clearing agency should apply in respect of their own board and stakeholder communities. As a related point, DTCC believes that it should be left to the discretion of each registered clearing agency's judgment to determine when and how the reporting and mitigation of potential conflicts should be implemented specifically. DTCC also believes that a flexible approach in this area is warranted because, although it is true as the Proposing Release suggests that concentration of clearing and settlement services has occurred over time,[6] the degree to which such concentration has occurred is different across cleared

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[2] As a related matter, DTCC notes that on page 121 of the Proposing Release the text provides that DTCC does not define what currently constitutes an independent director. However, we would direct the Commission to the DTCC Board Mission and Charter, where such a definition may in fact be found under the definition of a "non-participant director": https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Mission-and-Charter.pdf.

[3] See Proposing Release at 33.

[4] See Proposing Release at 17.

[5] See Proposing Release at 57 at note 105.

[6] See Proposing Release at 84-85.

markets. Therefore, the potential degree of challenge that inherent conflicts present for each registered clearing agency likely will vary, and a flexible, non-prescriptive approach will be most effective to ensure each clearing agency is able to manage the specific potential conflicts at issue.

Nominating Committee

DTCC generally supports the requirements set forth in proposed Rule 17Ad-25(c) with respect to the establishment and obligations of the nominating committee, and we agree with the Commission's reasoning behind requiring that such committees be comprised of a majority of independent directors. In our own experience, we have found that independent representation on nominating committees is effective in ensuring the selection of board directors who are aligned with the interests of the registered clearing agency, expert in those matters which are critical to ensuring a clearing agency's efficiency and effectiveness, and sufficiently diverse such that the board has a high probability of reflecting as wide and diverse a range of stakeholder views as possible. For these reasons, we do not believe that the Commission needs to modify the proposed requirements further in terms of prescribing certain outcomes that the nominating committee must achieve in ensuring certain stakeholder viewpoints are represented at the expense of others, or suggesting additional criteria the nominating committee must consider.

We believe, however, that the Commission should clarify what it means in suggesting that the nominating committee must be the "exclusive" venue for evaluating board director nominees.[7] Our perspective is that in this context "exclusive" means that there must be one clearly designated board committee within the registered clearing agency's governance structure that performs the entire function and role of the nominating committee. At the same time, such a committee need not be limited in the scope of its role and function to simply evaluating board director nominees, so long as all other requirements set forth in Proposed Rule 17Ad-25(c) are satisfied. We raise this point because we are aware that several registered clearing agencies, including our own, contain the nominating committee function in committees that may address governance matters more broadly. We do not interpret the Commission's intent in the Proposal to elevate form over function in requiring registered clearing agencies to reorganize these existing committees. However, we believe that further clarification from the Commission on this point would help ensure that registered clearing agencies are fully compliant with the proposed requirements.

Risk Management Committee

DTCC generally supports the requirements set forth in proposed Rule 17Ad-25(d) regarding the establishment and function of a board risk committee. At present, DTCC maintains a board risk committee for each of its registered clearing agencies and has found that ensuring such bodies serve at the board level - composed of risk management experts - is critical to supporting the safety and efficiency of the registered clearing agency. Similar to our views on board composition, independence, conflicts, and the nominating committee, we appreciate again the Commission's proposed approach in allowing registered clearing agencies to use reasonably designed policies and procedures to address the proposed requirements. At the same time, we believe that certain terms and concepts in the proposal should be further clarified, as we are

[7] See Proposing Release at 65 and 72.

concerned that some parts of the Proposing Release and rule text imply that board risk committees merely serve as advisory or otherwise passive bodies, and we believe that such a perspective is either incorrect or, if the Commission is indeed prescribing such a role, would have harmful effects on risk management governance at registered clearing agencies.

For example, in the text of proposed Rule 17Ad-25(d)(1), the risk committee is established to "assist" the board, and in proposed Rule 17Ad-25(d)(2), the risk committee must provide an "opinion" to the board. Furthermore, in the Proposing Release there is discussion of how that opinion is developed in connection with "recommendations" the risk committee makes to the full board.[8] Read from a certain perspective, we are concerned that in these instances the Commission is suggesting that the board risk committee must be simply an advisory body to the full board without any ability to act directly on the board's behalf in facilitating risk management of the registered clearing agency. We note that the board risk committees for DTCC's registered clearing agencies do not function in such a passive manner, but instead act pursuant to delegated authority from the full board to evaluate and take risk management decisions directly. In our experience, such delegation does not mean that the board risk committee never interacts with or advises the full board, nor does it imply the full board does not take an active role in the risk management of the clearing agency. However, allowing for this balancing of roles and responsibilities between the two bodies enhances the clearing agency's ability to evaluate and respond in a timely manner to evolving risks and other changes in the relevant cleared market, and we do not recommend that the Proposal degrade or inhibit that ability by prescribing a more limited role for board risk committees. Therefore, we respectfully recommend that the Commission clarify in a final rule that the board risk committee is not merely an advisory body that only develops opinions or recommendations for full board consideration and action.

Recognizing the Proposal solicits comment on whether the requirement set forth in proposed Rule 17Ad-25(d)(1) is clear with respect to the reconstitution of risk committee membership,[9] we believe that the requirement is not clear for two reasons. First, we do not believe that "reconstitution" can be clearly understood to simply mean the membership of the committee as opposed to other factors, such as the form or even the inherent fundamental authority of the committee. Instead, we would suggest that the Commission consider alternative terms such as "reevaluate." Second, and more fundamentally, we believe that prescribing a requirement to effectively disassemble and then reassemble the membership of a critical function such as the board risk committee is both overly prescriptive and risks unduly disrupting the continuous, orderly and expert functioning of this important body within the registered clearing agency's governance. Therefore, we respectfully recommend that the Commission instead apply an outcomes-based approach to addressing the potential concern that board risk committees might become overly entrenched, non-representative, or otherwise non-responsive to the risk management concerns of the registered clearing agency's participants and stakeholders. Such an outcomes-based approach could, for example, constitute reasonably-designed policies and procedures that require the registered clearing agency to periodically evaluate whether the risk committee membership and structure continues to provide current, diverse and expert risk management oversight that supports the safety and efficiency of the clearing agency.

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[8] See Proposing Release at 76.
[9] See Proposing Release at 83.

Oversight of CSP Relationships

Regretfully, DTCC is unable to support the requirements set out in proposed Rule 17Ad-25(i) with respect to ensuring that a registered clearing agency's board of directors maintain effective oversight of relationships with CSPs. Our objections to this aspect of the Proposal relate to the approach the Commission has constructed in defining a CSP and in the proposed obligations under subparts (1) and (3) of Rule 17Ad-25(i), as we certainly otherwise agree with the overarching principle that registered clearing agency governance should prioritize due attention and focus on CSP relationships via reasonably designed policies and procedures. Therefore, our comments are focused on recommending ways in which the Commission can adjust the requirements in subparts (1) and (3) of the proposed Rule in a manner that we believe will more effectively achieve what the Commission seeks to achieve in this area.

Definition of a CSP

As a threshold concern, we believe that the proposed scope of the CSP definition is too broad. For example, we think that as currently drafted the definition could apply to a registered clearing agency's relationships with telephone and internet service providers, as well as the local police, fire, and other municipal services. We are uncertain as to whether the Commission intends to capture such entities in the CSP definition[10] and respectfully submit that requiring clearing agencies to do so would be impractical and overly burdensome. We also believe it is possible to scope out such ambiguity by amending the definition in proposed Rule 17Ad-25(a) so that it is composed of two components. First, we think the Commission should establish a clear definition of what is a "service provider." Second, we think the Commission should then establish a clear definition of what makes a service provider "critical."

In terms of defining what is a service provider, we would propose the following definition: any mutual understanding or agreement between a registered clearing agency and third-party entity by which the third-party entity is required or commits to provide ongoing goods or services to the registered clearing agency pursuant to a written contract. Importantly, we believe explicitly acknowledging the existence of a written contract would address instances where the third party may pose a risk to the clearing agency but there is no mutuality by which the clearing agency may exercise any control over the third party and its actions. It is also the written contract that provides the clearing agency with the legal authority to direct the third party to comply with third party risk management lifecycle practices. Further, the written contract would make clear that local police, fire, and other municipal services are explicitly out of scope. The proposed definition of service provider should also include an 'ongoing basis' element. Without this element, a one-off or single service may be included within the scope of the Proposal and trigger application of the full risk management lifecycle in the same way that a recurring arrangement does.[11] Based on our read of the Proposal's emphasis on continuous

[10] We note that the Commission seems to anticipate this concern in FN 133 in the Proposing Release; however, we disagree that the language of the proposed CSP definition on its face clearly carves out these kinds of entities and respectfully suggest that the Commission restructure its proposed definition to align with this statement more clearly in the Proposing Release. See Proposing Release at 91, note 133.
[11] We also note that including an 'ongoing basis' element in the definition of service provider would promote consistency with international regulatory approaches (e.g., Bank of England Outsourcing and Third Party Risk

monitoring by the board of CSP risks, we believe these proposed recommendations are consistent with the Commission's overall policy intent.[12]

With respect to the question of clarifying which service providers are in fact "critical" for the purposes of ensuring effective board oversight, we respectfully ask that the Commission first consider more fully how its approach to CSPs in the Proposal interacts, and potentially creates redundancy or misalignment, with existing similar concepts that apply to registered clearing agencies, whether under existing Commission requirements (such as Regulation Systems Compliance and Integrity or "Regulation SCI") or under applicable international standards.[13] Depending on what the Commission adopts as a final definition, there will likely be instances where a registered clearing agency will have to comply with overlapping requirements. Clarity regarding how a registered clearing agency might observe one set of requirements to satisfy another set of requirements would help achieve efficient and streamlined policy outcomes. Second, and with the intent of seeking to mitigate potential conflicts with existing parallel requirements for registered clearing agencies, we respectfully recommend that the Commission define a CSP as a service provider that directly supports the delivery of clearing and settlement functionality or any other purpose material to the business of the registered clearing agency. To assist registered clearing agencies in interpreting and applying this concept, the Commission could provide a non-exhaustive list of relationships and service providers that registered clearing agencies should consider, recognizing that as a practical and legal matter each clearing agency remains obligated to identify and manage its own specific universe of CSP relationships. The Commission also could provide guidance as to how to interpret materiality in this context. As a start, we respectfully suggest that materiality entail relationships where the failure to provide an expected service to a registered clearing agency would pose an imminent and significant risk to the clearing agency and its ability to provide clearance and settlement services consistent with its participant and regulatory obligations.

Responsibility of the Board

A second threshold concern we have with the Proposal is the manner in which it appears to shift what seems to be almost the entirety of responsibility for CSP oversight from a registered clearing agency's management to the board. We believe that such a shift in responsibility is inappropriate insofar as what the Proposal effectively requires is not board oversight of CSP relationships but instead direct board management of such relationships. In addition, without reestablishing the proper balance between board director and management roles in this regard, registered clearing agencies may be unable to fill their board seats because directors will either

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Management (March 2022) and Swiss Financial Market Supervisory Authority, Circular 2018/3 Outsourcing – Banks and Insurers).

[12] See Proposing Release at 95.

[13] As a related point, we note that while the Proposal makes various references to the CPMI-IOSCO Principles for Financial Market Infrastructures ("PFMI"), including Annex F thereof, the concept of a CSP is not actually defined in the PFMI and, therefore, we question whether the Commission's definition in the Proposal and discussion of Annex F as "helpful" in satisfying proposed Rule 17Ad-25(i) will give rise to unintended issues around international deference, given that we understand the PFMI and Annex F are interpreted and applied by multiple global regulators who often have overlapping authority over globally-active CCPs, including the DTCC CCPs.

lack the prerequisite expertise or otherwise be ill-equipped to perform the responsibilities laid out in the Proposal.

To illustrate the above-described concerns, we can use the Proposal's discussion of how it may be helpful for the board to use Annex F of the PFMI as a means of observing its obligations under proposed Rule 17Ad-25(i)(1).[14] Assuming a board were to follow this approach, we believe the requirement would be for the board itself to contact the registered clearing agency's service providers directly to gather and independently analyze the information detailed in Annex F because the Proposing Release provides that it is the board itself that completes the Annex F assessment.[15] We understand the Proposal to require the board to perform directly a similar set of tasks under proposed Rule 17Ad-25(i)(3), which requires the board to review and approve plans for entering into CSP engagements. In this context, we understand that the Commission would like for the board itself to review and provide detailed feedback to management regarding ongoing discussions and negotiations with CSPs. Thus, the board would have to perform these time and resource-intensive tasks notwithstanding the fact that the registered clearing agency has existing subject matter experts in and reporting to the clearing agency's senior management (and the board) who are already performing many if not all of the same tasks independently, and notwithstanding the fact that management is already subject to board oversight under existing legal and regulatory requirements. Assuming this reading of the Proposal is correct, we respectfully submit to the Commission that the proposed CSP requirements will effectively render the distinction between directors and management moot, thereby disincentivizing individuals from seeking to serve on registered clearing agency boards.

As an alternative approach, we recommend that the Commission not impose the obligations set forth in sub-parts (1) and (3) of proposed Rule 17Ad-25(i) directly on the board. Instead, the Commission should follow the approach it and other global regulators have applied in similar contexts and with the positive outcome of helping ensure resiliency and management of CSP risk. We note, for example, that under Rule 1003(b)(1) of Regulation SCI that an "SCI review" is conducted by a dedicated function within the SCI entity's management (such function typically can be internal audit), which then reports such review to senior management and, ultimately, the board and the Commission.[16] The Proposal also notes this existing requirement but does not explain why it otherwise fails to address, or otherwise directly interacts with, the policy concerns the Commission seeks to address in the new proposed CSP requirements.[17] In addition, we observe that Annex F of the PFMI applies a similar approach in providing that the board itself does not perform the process laid out in Annex F.[18] Therefore, we believe that the Commission should seek to align its approach in proposed Rule 17Ad-25(1) and (3) with these precedents. In practice, this could entail having an impartial function within a registered clearing

[14] See Proposing Release at 97.

[15] See id.

[16] See 17 CFR 242.1003(a).

[17] See Proposing Release at 93-95.

[18] "The identification and management of risks should be overseen by the critical service provider's board of directors (board) and assessed by an independent, internal audit function that can communicate clearly its assessments to relevant board members. The board is expected to ensure an independent and professional internal audit function." See Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions ("CPSS-IOSCO"), Principles for financial market infrastructures (Apr. 16, 2012), available at http://www.bis.org/publ/cpss101a.pdf, at 170.

agency (e.g., third-party risk management) collect and analyze the information necessary to evaluate the risks targeted by proposed Rule 17Ad-25(i) (such as, for example, applying Annex F of the PFMI) and present that information directly to the board, so that the board could then evaluate and maintain its oversight over CSP relationships and otherwise hold management appropriately accountable.

Anticipated Burdens and Costs of the Current Proposal

A third, and final, threshold concern with the scope and requirements of proposed Rule 17Ad-25(i) is the anticipated burdens and costs that we believe will arise if the Commission adopts this aspect of the Proposal without the above-recommended modifications. In reviewing the relevant economic analysis in the Proposing Release, we observe that the economic considerations as presented allow for the actions of merely two individuals reviewing and revising the governance documents and policies.[19] As such, they do not appear to take into consideration the full review and engagement of required stakeholders and the iterative nature of the governance document review and approval process. Additionally, the economic considerations do not appear to take into consideration the operationalization of the required policies and procedures, including the activities associated with engaging the board as would be required by the proposal.[20] Therefore, we believe that the Proposal's approach in this regard is incomplete and does not in fact reflect the actual costs and burdens registered clearing agencies will incur. To assist the Commission in properly considering the actual costs and burdens that the requirements set forth in proposed Rule 17Ad-25(i) would entail, we offer our own preliminary internal assessment of the expected burdens, as measured in time and full-time employees, that we would expect to have involved in both implementation and ongoing compliance. However, please note that the number of CSPs and the estimated time allocations described below are based on the concept of critical service relationships that DTCC currently applies under existing regulatory obligations for its registered clearing agencies, such as Regulation SCI. Therefore, should the definition of CSP in proposed Rule 17Ad-25(a) come into effect, we anticipate an increased number of designated critical relationships, and therefore CSPs. As such, we expect that the below estimates would also increase accordingly.

Regarding the one-time burden of implementing proposed Rule 17Ad-25(i), in addition to the burdens noted in the Proposing Release (which entail the efforts of one assistant general counsel and one compliance attorney),[21] we preliminarily estimate that an additional 950 hours (aggregated across all three of our registered clearing agencies) beyond the Commission's initial calculation would be required and at least four full-time employees would be involved in such matters.

- We would have to perform various policy and procedure reviews and approvals by management and management committees prior to presentation of those materials for approval to the boards. Given the iterative nature of the process, the amount of internal stakeholder feedback required under our existing internal processes, and the number of

[19] See Proposing Release at 141.
[20] See Proposing Release at 142.
[21] See Proposing Release at 141.

personnel involved for these extensive processes, we preliminarily estimate that an additional 100 hours should be allocated for this stage of implementation.

- Providing gap analysis and training on all updated policies and procedures to all relevant stakeholders for each clearing agency will require the involvement of a number of full-time employees beyond the two personnel indicated in the Proposal, and we preliminarily estimate that an additional 100 hours should be allocated for this stage of implementation.

  As contemplated under proposed Rule 17Ad-25(i)(2), preparing and presenting to the boards for review and approval plans for entering into third-party relationships with CSPs will be an iterative process requiring the involvement of a number of personnel and we preliminarily estimate that 25 hours should be allocated per identified CSP for this stage of implementation. Currently, and without yet applying the definition set forth in proposed Rule 17Ad-25(a), DTCC has 30 CSPs.[22] On this basis, the total additional preliminary estimate of hours to be allocated for implementing this requirement is 750 (25 X 30 = 750).

- An additional burden that we believe could arise from observing proposed Rule 17Ad-25(i)(2) is the cost of having the boards conduct their own review of CSP third-party plans so that the boards can obtain information needed to make attestations and otherwise have access to the subject matter expertise needed to review and analyze all of the risks covered by the attestation (including if the boards were to use Annex F of the PFMI for such purposes). Our preliminary cost estimate for this burden, assuming the boards may use an outside party to assist in this effort, is around $10,000 per assessment and, in our experience, these engagements normally take one to two weeks to execute by most vendors.

Regarding the annual compliance burden for proposed Rule 17Ad-25(i), in addition to the burdens noted in the Proposing Release (which entail the efforts of one assistant general counsel and one compliance attorney),[23] we preliminarily estimate that an additional 660 hours in annual burden (aggregated across all three of our registered clearing agencies) would be required beyond the Commission's initial calculation and that at least four full-time employees would be involved in such matters. As such, we expect that the below estimates would also increase accordingly.

- We would have a number of full-time employees (beyond the two personnel contemplated in the Proposal) monitoring compliance and documentation activities, including execution of controls and oversight necessary to help ensure compliance with requirements, and consistency and consideration of annual updates to the relevant policies and procedures. Given these requirements and the number of personnel involved, we estimate that an additional 60 hours should be allocated.

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[22] For this purpose, we have defined "CSP" based on existing regulatory obligations applicable to DTCC, such as Regulation SCI.

[23] See Proposing Release at 141.

- As contemplated under proposed Rule 17Ad-25(i)(2), on an annual basis preparing and presenting to the boards for review and approval plans for entering into third-party relationships with CSPs will be an iterative process requiring the involvement of a number of personnel involved and we preliminarily estimate that 25 hours should be allocated per identified CSP for this stage of implementation. Currently, and without yet applying the definition set forth in proposed Rule 17Ad-25(a), DTCC has 30 CSPs.[24] On this basis, the total additional preliminary estimate of hours to be allocated for implementing this requirement is 750 (25 X 30 = 750).

As noted above, these estimates are preliminary and may change as we further consider and understand the full implications of proposed Rule 17Ad-25(i). As such, we are pleased to discuss this information further with Commission staff as they consider how best to proceed with this aspect of the Proposal. In light of the above, we respectfully request that the Commission, at a minimum, reconsider the expected benefits, burdens, and costs of proposed Rule 17Ad-25(i), understanding that the proposed requirements to increase board obligations and involvement will impose significant resource demands on registered clearing agencies beyond those initially identified in the Proposing Release.

Views of Participants and Other Relevant Stakeholders

DTCC supports the policy objectives behind the requirements set forth in proposed Rule 17Ad-25(j) regarding the obligation of the board to solicit and consider viewpoints of participants and other stakeholders. As we have explained earlier in this letter, we believe that DTCC's participant-owned governance structure results in a board and board committee composition that is strongly aligned and widely diverse in representing the various participant types that benefit from the services of the registered clearing agencies. We also note that, at present, the DTCC registered clearing agencies maintain a diverse array of participant and stakeholder working groups that are designed to solicit input from constituencies beyond those immediately represented on the boards of the registered clearing agencies. Such groups include DTCC's Systemic Risk Roundtable, Risk Advisory Council, Clearing Agency Liquidity Council, Client Risk Forum, and FMI Forum. In utilizing these and other participant/client/stakeholder fora, it is our experience that such groups provide expert and invaluable insights on matters related to, among other things, changes to margin models, liquidity risk management requirements, membership standards, and new services.

While the Proposal acknowledges the existence of these and other current participant and stakeholder governance groups, the Proposal also states that proposed Rule 17Ad-25(j) is intended to help promote the formalization of existing clearing agency processes and structures to help ensure their ongoing use, both for the existing set of registered clearing agencies and for potential future registrants.[25] The Proposal acknowledges that for those registered clearing agencies that are covered clearing agencies, such as the DTCC clearing agencies, such entities are already subject to governance arrangement requirements that entail policies and procedures that support the public interest and the objectives of owners and participants, as well as consider

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[24] For this purpose, we have defined "CSP" based on existing regulatory obligations applicable to DTCC, such as Regulation SCI.

[25] See Proposing Release at 101.

the interests of participants customers, securities issuers and holders, and other relevant stakeholders.[26] In light of these statements and as an initial matter in evaluating proposed Rule 17Ad-25(j), DTCC is uncertain whether the Commission means to convey that a covered clearing agency subject to Rules 17Ad-22(e)(2)(iii) and (vi) is likely already observing the requirements set forth in the Proposed Rule, or whether there is something more a covered clearing agency should do to satisfy the new proposed requirements. If the Commission's intention is that the new proposed requirements are intended to further prescribe and, thereby, standardize the current approach taken by covered clearing agencies in observing existing Rules 17Ad-22(e)(2)(iii) and (vi), we respectfully submit that such an approach is redundant, overly prescriptive, and will likely reduce the ability of each unique covered clearing agency to develop the necessary stakeholder inputs unique to the cleared markets that they serve (which was the fundamental rationale for the covered clearing agency requirement in the first place). If, on the other hand, the Commission means to suggest that a covered clearing agency may seek to comply with proposed Rule 17Ad-25(j) by complying with existing requirements, we respectfully suggest that the Commission clarify this point further.[27]

We also wish to raise a concern regarding the Commission prescribing that proposed Rule 17Ad-25(j) would apply broadly to "material developments in governance and operations" of a registered clearing agency. As a threshold matter, we are not sure how to interpret such a broad concept through policies and procedures, as we read this term to basically mean anything and everything that the registered clearing agency already addresses through its board and management structures and beyond. We also believe, in considering the question of what gaps persist in stakeholder input to governance, that the Commission should more purposefully consider all of the various existing channels that currently exist for such input: namely, the self-regulatory organization proposed rule change notice and SIFMU advance notice requirements.[28] Additionally, we are concerned that prescribing this broad ambiguous concept will result in adding unbounded layers, and therefore operational risk and delay, to the critical function that is governance. In a business-as-usual environment, this will likely result in a registered clearing agency becoming less dynamic and flexible in performing its role for the markets. In a crisis environment, this could mean that the registered clearing agency is unable to perform in unexpected and turbulent market conditions. Therefore, we believe that the Commission should refine the actual intended scope of area covered by a stakeholder consultation requirement.

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[26] See id; see 17 CFR 240.17Ad-22(e)(2)(iii) and (vi).

[27] We also believe it is possible that the Proposal's suggested approach in proposed Rule 17Ad-25(j) may be for covered clearing agencies to document how they currently comply with the current requirements in Rules 17Ad-22(e)(2)(iii) and (vi). If that is the case, then the Commission should modify the Proposal accordingly to more specifically take into account how the proposed Rule applies to covered clearing agencies versus other registered clearing agencies.

[28] As a related technical observation, we would like to understand whether the Commission expects registered clearing agencies to treat stakeholder engagements under proposed Rule 17Ad-25(j) as "any correspondence or other communications reduced to writing (including comment letters) to and from such [registered clearing agency] concerning the proposed rule change" as required by the General Instructions to Form 19b-4. General Instructions to Form 19b-4, section D - Amendments. If so, we are concerned that applying such an interpretation would likely chill open and frank discussions between the clearing agency and the stakeholder groups. We are also concerned that such an interpretation would increase the costs and burdens to the SRO rule filing process for registered clearing agencies.

In our experience, whether in consulting with our established stakeholder groups, responding to comments submitted by participants and stakeholders to our proposed rule changes and advance notice filings, or dialoguing more broadly with both the financial services and regulatory community, the primary area of potential concern around clearing agency governance and responsiveness lies with transparency around the risk management costs and obligations that a registered clearing agency may impose. Therefore, we believe that if the Commission does see a need to prescribe how stakeholder groups interact with registered clearing agency governance, the correct standardizing concept should be "risk management." We would also submit that referencing "risk management" should be effective in capturing the broad swathe of issues and topics noted by the Commission in the Proposing Release as being of interest to the broader universe of participants and stakeholders in a registered clearing agency: financial risk management, cyber and operational resiliency, default management, and the potential introduction of new cleared products or services.

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DTCC appreciates this opportunity to comment on the merits of improving governance for registered clearing agencies. We look forward to continuing to engage with our members, the Commission, and the broader industry on this important initiative. We welcome the opportunity to further discuss any of these comments with you at your convenience. If you have any questions or need further information, please contact me at [redacted].

Sincerely,

Murray Pozmanter

Appendix

Request for Comment #	*Request for Comment*	*DTCC Response*
1.	Is requiring that the boards of registered clearing agencies have a majority of independent directors an effective tool for ensuring a transparent and objective governance process that balances the potentially competing or divergent interests of owners and participants? Has the Commission accurately described the benefits of independent directors, as defined in this release, to the board of a registered clearing agency? Why or why not?	Please see our discussion in our comment letter regarding the benefits of independent directors and board composition.
2.	Are there other ways to define "independent director" or "material relationship" that would achieve the Commission's goals? If so, what are they? Should the Commission establish a numerical threshold, such as $100,000 annually, for compensatory relationships in order for them to be considered material under this rule? If so, what should that numerical threshold be? Please be specific. Should the Commission create a list of the types of relationships that should be considered either material or that could affect the independent judgment or decision-making of a director under this rule, and should that list distinguish between compensatory and non-compensatory relationships? Why or why not?	No, as we explain in our comment letter, we believe the current scope of the Proposal is sufficient.
3.	Should the Commission define the term "control" in the proposed rules? If so, would it be appropriate to adopt a definition similar to the one in 17 CFR 246.2, which states that control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise?	No, as we explain in our comment letter, we believe the current scope of the Proposal is sufficient.
4.	What is the appropriate percentage of independent directors on the board of a registered clearing agency? Does the requirement for a majority of directors to be independent directors support the goals discussed in this proposal? Would another threshold be more effective at addressing diverging views among owners, participants, and other relevant stakeholders in the registered clearing agency? For example, would a requirement that one-third of the directors be independent (which has been adopted by European jurisdictions) provide the benefits of independent directors without any of the potential drawbacks? Please explain.	Please see our discussion in our comment letter regarding the benefits of independent directors and board composition.
5.	Is the application of director independence requirements appropriate for all registered clearing agencies, or should there be distinctions made among registered clearing agencies based on certain factors, such as organizational structure or products cleared? If so, what factors are relevant and why? Would these proposed rules apply to all types of organizational structures in a consistent manner, or would they impede a registered clearing agency from changing its organizational structure into a more innovative or efficient structure?	Please see our discussion in our comment letter regarding the benefits of independent directors and board composition.

6.	Is a one-year lookback period adequate for purposes of the "material relationship" definition and proposed Rules 17Ad-25(f)(2)-(6)? For example, is a one-year time period for the receipt of certain payments by clearing agencies the appropriate length of time to determine that a director is precluded from being considered independent? How will this impact the ability of clearing agencies to recruit experienced persons to serve as directors? More generally, how large is the pool of potential directors that could serve as independent directors, as defined in this release, on the boards of registered clearing agencies? Are there particular elements of the independent director definition that limit the pool of potential independent directors? Should those elements be modified to expand the pool?	Please see our discussion in our comment letter regarding our view that the proposed definition of independence is appropriate.
7.	Is it appropriate to include affiliates of registered clearing agencies as relevant to the consideration of material relationships of independent directors, as well as certain scenarios that preclude independence?	Please see our discussion in our comment letter regarding our view that the proposed definition of independence is appropriate.
8.	Is the scope of the scenario in proposed Rule 17Ad-25(f)(4) overly broad or overly narrow in covering all partners, regardless of relative holdings, and controlling shareholders? Should this provision cover all shareholders, or non-managing partners, instead? Why or why not?	Please see our discussion in our comment letter regarding our view that the proposed definition of independence is appropriate.
9.	The Commission is proposing in Rule 17Ad-25(f)(3) to carve out directors who are serving as directors on other boards from the list of scenarios that explicitly preclude independence. Is this carve-out appropriate in order to permit a director of a registered clearing agency who also serves as a director of another legal entity to qualify as independent (provided all other requirements are met), or should there be some restrictions, such as restrictions on serving as a director of an affiliate, or participant? Why or why not?	Please see our discussion in our comment letter regarding our view that the proposed definition of independence is appropriate.
10.	The Commission requests comment on whether the proposal to require independent directors raises any potential legal issues for those directors or clearing agency governance committee members. Specifically, as a matter of corporate law, would independent directors or committee members be forced to contend with competing duties or obligations to the clearing agency such as under laws of another jurisdiction, including any duties or obligations that would foreclose participation in the board or the committees? If so, how may the goal of receiving independent, diverse opinions be achieved?	Please see our discussion in our comment letter regarding our view that the proposed definition of independence is appropriate.
11.	The Commission requests comment on whether the proposed approach to board composition and board member independence may raise compliance issues with respect to being registered with the Commission and the CFTC or a non-U.S. regulatory authority. If so, what steps should the Commission take to continue to facilitate dually-registered clearing agencies?	As we are not registered with the CFTC, our response to this question is limited to the general observation that it is desirable to avoid conflicting or duplicative requirements across overlapping regulatory regimes, given that such outcomes tend to increase

		market fragmentation and give rise to unnecessary costs that are borne across markets. Therefore, we encourage the SEC to try to mitigate these risks in whatever final approach is adopted relative to the CFTC's final approach. In this regard, please see our suggested alternative approach to this requirement in our comment letter, which we believe would likely mitigate the risk of overlapping or redundant obligations.
12.	The Commission requests comment on whether the requirement to undergo a broad consideration of facts and circumstances when determining whether a board member is independent is sufficiently clear. Is there additional guidance needed on what sources could be consulted or what types of relationships could be considered?	Please see the discussion in our comment letter where we explain that the current scope of the Proposal is appropriate.
13.	The Commission is applying the lowered threshold applicable to registered clearing agencies whose voting interests are majority-held by participants, or whose parent company's voting interests are majority-held by the registered clearing agency's participants. Does this scope strike the right balance between permitting flexibility in ownership structures versus providing the lowered threshold of 34 percent independent directors only when warranted (*i.e.*, when the interests of participants and owners are less likely to diverge when participant-owners are the holders of voting interests)? Why or why not?	Yes, please see our discussion in our comment letter.
14.	Should the Commission permit directors who have material relationships with participants (such as being an employee of a participant), other than those relationships that are explicitly precluded in Rule 17Ad-25(f), to meet the definition of independent director, or should these relationships be precluded as well? Should the Commission be more restrictive, as is proposed in paragraph (f)(2), with respect to compensation and payments received from the registered clearing agency or its affiliates, rather than participants? Why or why not?	Please see our discussion in our comment letter regarding our view that the proposed definition of independence is appropriate.
15.	The Commission is soliciting comment on how to view participant clearing fees or other payments from participants that generate revenue for the clearing agency as a potential scenario that precludes director independence. Is it sufficiently clear in the text of proposed Rule 17Ad-22(f)(4) that revenues from participants are covered under the scope of this prohibition? Should the Commission treat revenues from participants differently from other sources of revenues or expenditures? Should the Commission create a carve out for lower levels of revenues in order to promote the opportunity for partners or controlling shareholders of small participants	Please see our discussion in our comment letter regarding our view that the proposed definition of independence is appropriate.

	to be able to qualify as an independent director, such as by creating a minimum threshold of payments covered by this provision? Why or why not?	
16.	The Commission is proposing an extensive list of natural persons who fall within the definition of family member for this rulemaking, along with legal entities under their control. Has the Commission chosen an appropriate scope for the definition of family member, or is the definition unworkable, either because it is overbroad, or because it misses an important category of persons?	Please see our discussion in our comment letter regarding our view that the proposed definition of independence is appropriate.
17.	Should the Commission define "family member" to refer to "spouse or spousal equivalent"? Why or why not? Is adding "spousal equivalent" unnecessary because such person would be covered as "any person (other than a tenant or employee) sharing a household," which is already part of the definition? Please explain.	Please see our discussion in our comment letter regarding our view that the proposed definition of independence is appropriate.
18.	The Commission is not specifying particular roles for several aspects of this rulemaking, such as who makes the determination that a director is an independent director. Should the Commission be more prescriptive and specify whose responsibility it is to make such a determination? Why or why not?	Please see our discussion in our comment letter regarding our view that the proposed definition of independence is appropriate.
19.	Is it appropriate for the Commission to require that the nominating committee be the exclusive venue for evaluating nominees for director to the board of directors? What alternative arrangements or processes might also be appropriate for evaluating director nominees? Should the rules incorporate such arrangements? Why or why not? Please explain.	Please see our discussion in our comment letter regarding some concern we have around how the term "exclusive" may be read in light of existing registered clearing agency nominating committee structures.
20.	Should the Commission be more prescriptive in requiring that certain types of stakeholders, such as smaller participants and customers, be afforded a right of participation in the board of a clearing agency? Why or why not? If so, which types of stakeholders? Please explain with specific information.	Please see our discussion in our comment letter supporting the scope of the requirements as proposed.
21.	Do commenters agree with the Commission's assessment that requiring a majority of independent directors on the nominating committee will improve the quality of nominees? Please explain.	Please see our discussion in our comment letter regarding our support for this aspect of the Proposal.
22.	Do commenters believe that the proposed rule will help ensure that the nominating committee considers nominees that represent the views of smaller participants and clients of participants? Please explain. Should the Commission consider additional specific composition requirements? Why or why not? If so, what should those requirements be?	Please see our discussion in our comment letter regarding our support for this aspect of the Proposal.
23.	Has the Commission provided sufficient specificity regarding the scope and content of the evaluation process for director nominees? Please identify and explain other types of criteria,	Please see our discussion in our comment letter supporting the

	if any, that should be included in the evaluation process for director nominees. Please identify and explain any proposed criteria that should be excluded from the evaluation process for director nominees.	scope of the requirements as proposed.
24.	The Commission is not proposing to carve out the risk management committee from the director independence requirements under proposed Rule 17Ad-25(e). Should the Commission include such a carve-out for the risk management committee so that a registered clearing agency would not be required to include independent directors on the committee? Why or why not? If not, should there be separate director independence requirements applicable only to the risk management committee that reflect the highly specialized risk management expertise needed to serve on the committee? Why or why not?	We agree with the Commission's proposed approach to this aspect of the Proposal and do not recommend further modifications.
25.	Is the proposed requirement that the registered clearing agency's risk management committee be a committee of the board a more effective way to structure the risk management committee than requiring that the risk management committee be an external committee, such as a management committee or an advisory committee? Why or why not? If not, should the risk management committee be structured to represent more participants, regardless of whether those participants are represented on a clearing agency's board? Why or why not?	We agree with the Commission's proposed approach to this aspect of the Proposal but please note our concerns regarding the need to avoid having the board risk committee serve merely as a passive body to the full board.
26.	The Commission is not specifying whose responsibility it is to determine the matters presented to the risk management committee for consideration. Should the Commission be more prescriptive and specify whose responsibility it is to make such determinations? If so, should the Commission require the risk management committee to designate thresholds or identify the types of risk management related matters that warrant consideration by the committee? Why or why not? Please explain.	We agree with the Commission's proposed approach to this aspect of the Proposal and do not recommend further modifications.
27.	Is the proposed requirement that the risk management committee include at all times representatives from the registered clearing agency's owners and participants sufficient to help ensure that the directors serving on the committee will have the specific risk management expertise and relevant experience needed to make effective risk management decisions? Why or why not? In requiring that the risk management committee include such representatives at all times, should the Commission require that a specific percentage or number of representatives from the clearing agency's owners and participants serve on the risk management committee? Why or why not? If so, what percentage or number? Please explain with specific information.	We agree with the Commission's proposed approach to this aspect of the Proposal and do not recommend further modifications.
28.	Should the Commission require the risk management committee to include at all times a specific percentage or number of representatives from small participants of the clearing agency in addition to representatives from the owners	We agree with the Commission's proposed approach to this aspect of the Proposal and do not

	and participants more generally, as proposed? Why or why not? If so, what percentage or number? Please explain with specific information.	recommend further modifications.
29.	The Commission is not specifying whose responsibility it is to determine the appropriate qualifications and expertise needed for a director to serve on the risk management committee. Should the Commission be more prescriptive and specify whose responsibility it is to make this determination, such as the nominating committee, or should this determination remain up to the discretion of the registered clearing agency? Why or why not? Please explain.	We agree with the Commission's proposed approach to this aspect of the Proposal and do not recommend further modifications.
30.	The Commission requests comment on whether the requirement that a risk management committee "reconstitute" its membership on a regular basis is sufficiently clear. Is there additional guidance needed on what "reconstitute" means? Is it sufficiently clear that the term "reconstitute" refers to the membership of the risk management committee and not to the form of the committee? Why or why not? Should the Commission instead require that the membership be "rotated"?[29] Please explain.	Please see our comment letter discussion of this aspect of the Proposal.
31.	Has the Commission provided a sufficient explanation for what constitutes "on a regular basis" with respect to how often a risk management committee is required to reconstitute its membership? Why or why not? Would a more specific reconstitution requirement be appropriate? For example, should this requirement specify a frequency for the risk management's committee reconstitution (e.g., annually)? Why or why not? If so, please explain what the appropriate frequency should be.	Please see our comment letter discussion of this aspect of the Proposal.
32.	Are proposed Rules 17Ad-25(g) and (h) sufficient to have registered clearing agencies address conflicts of interest within their governance arrangements? Why or why not? Please provide specific examples to illustrate your points, if possible.	We agree with the Commission's proposed approach to this aspect of the Proposal and do not recommend further modifications.
33.	Do commenters agree with the potential conflict concerns that the Commission has identified? What effect would the identified conflicts of interest likely have? Should the Commission focus on any of these conflicts more than others? Are there other existing conflicts concerns that commenters believe warrant scrutiny? If so, what are they and how are they likely to affect registered clearing agencies? Which conflicts of interest could potentially cause the greatest harm to a registered clearing agency? Please explain.	We agree with the Commission's proposed approach to this aspect of the Proposal and do not recommend further modifications.
34.	What potential new conflicts of interest could arise that the Commission should consider? What other parties may have conflicts of interest that would affect whether they should control or participate in the governance of a registered clearing agency? In what circumstances do these conflicts of interest arise?	We agree with the Commission's proposed approach to this aspect of the Proposal and do not recommend further modifications.

35.	Are there any additional requirements and/or guidance that the Commission could provide to help registered clearing agencies evaluate the relationships of their directors and senior managers to identify potential sources of conflicts? Please explain with specifics in terms of processes that would help identify both existing and potential conflicts of interest involving directors or senior managers of the registered clearing agency.	We agree with the Commission's proposed approach to this aspect of the Proposal and do not recommend further modifications.
36.	In requiring registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to require a director to document and inform the registered clearing agency promptly of the existence of any relationship or interest that reasonably could affect the independent judgment or decision-making of the director, does proposed Rule 17Ad-25(h) provide sufficient requirements to have directors document and inform the registered clearing agency promptly of potential conflicts of interest? Why or why not?	We agree with the Commission's proposed approach to this aspect of the Proposal and do not recommend further modifications.
37.	Is the "reasonably could affect" standard proposed in Rule 17Ad-25(h) sufficient? Why or why not?	We agree with the Commission's proposed approach to this aspect of the Proposal and do not recommend further modifications.
38.	Is the definition of "service provider for critical services" sufficiently clear and properly scoped? Why or why not? Please explain and include alternative definitions, if possible.	Please see our comment letter discussion of this aspect of the Proposal, where we raise significant concerns with the definition.
39.	In requiring registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to enable the board to oversee relationships with service providers of critical services, should the Commission provide specific guidance regarding the means and measures by which the board performs such oversight responsibilities? Why or why not?	Please see our comment letter discussion of this aspect of the Proposal, where we suggest that the Commission restructure the overall approach it has proposed for board oversight.
40.	In requiring registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to confirm and document that risks related to relationships with service providers for critical services are managed in a manner consistent with its risk management framework, should the Commission require—rather than provide as guidance, as currently formulated—that the board confirm and document the risks through a self-assessment as discussed above? Why or why not?	Please see our comment letter discussion of this aspect of the Proposal, where we raise concerns with even the current level of prescription laid out in the Proposal and suggest that the Commission restructure the overall approach it has proposed for board oversight.
41.	The Commission understands that some registered clearing agencies have established multiple groups or fora to target specific topics or types of participants when sharing and soliciting information. What should a registered clearing agency consider when determining to establish one versus multiple fora for soliciting viewpoints? Why? How should it	We do not believe it is appropriate for the Commission to prescribe such factors. Please see our comment letter discussion of this aspect of the Proposal.

	select the types of stakeholders or market participants from whom it solicits information? Are there particular topics for which a group or fora should be required under the rule? Are there any merits in limiting the number of different groups or fora to avoid overly fragmenting the discussion of topics and solicitation of viewpoints? Please explain with specific examples, if possible.	
42.	Should the rule include specific requirements applicable to committees, working groups, or other fora when established by a clearing agency? Please explain.	We do not believe it is appropriate for the Commission to prescribe such factors. Please see our comment letter discussion of this aspect of the Proposal.
43.	The proposed rule would require that a registered clearing agency solicit viewpoints regarding material developments in its governance and operations. Does limiting the topics for soliciting viewpoints to "material" aspects of a clearing agency's governance and operations provide for the appropriate scope of topics for which a clearing agency should solicit viewpoints? Why or why not? Should the rule limit the topics for soliciting viewpoints only to risk management? Why or why not? Conversely, should the set of topics be expanded to include topics such as participation requirements, products cleared, fees, new technologies, services, or other topics relevant to participants and other stakeholders? Please explain with specific examples, if possible.	Please see our comment letter discussion of this aspect of the Proposal, where we raise concerns regarding the reference to "governance and operations" as opposed to "material" aspects.
44.	The proposed rule would require that the registered clearing agency solicit viewpoints on a recurring basis. How frequently should a registered clearing agency solicit viewpoints? Should the requirement apply on an annual basis, a quarterly basis, or some other frequency? How should a clearing agency balance the frequency of its outreach against the obligation to document its consideration of viewpoints received?	We do not believe it is appropriate for the Commission to prescribe such factors. Please see our comment letter discussion of this aspect of the Proposal.
45.	Does the proposed rule interact with the board's fiduciary duty to the clearing agency? If so, how? Please explain with specific information.	Please see our comment letter discussion of this aspect of the Proposal.
46.	Are the 180-day and 24-month compliance periods appropriate? Why or why not? Please be specific.	We are uncertain whether such periods are appropriate given that we are concerned that the scope of effort required to support some aspects of the Proposal are more burdensome than what the Commission has initially determined.
47.	Does the phased-in compliance date envisioned by the Commission adequately address the time and resources needed for clearing agencies to comply with proposed Rule 17Ad-25 if adopted? Please explain. Should specific requirements be phased in over time, such as to allow current	We are uncertain whether this approach is appropriate given that we are concerned that the scope of effort required to support some aspects of the Proposal are more

	directors to serve their complete term rather than needing to resign early in order to adjust the number of independent directors on a board? If so, what is the appropriate number of days that would allow current directors to serve their complete terms?	burdensome than what the Commission has initially determined.