

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102889 File No. 600-44]

CME Securities Clearing, Inc.; Order Instituting Proceedings to Determine Whether to Grant or Deny an Application for Registration as a Clearing Agency under Section 17A of the Securities Exchange Act of 1934

April 18, 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.¹ Notice of the Application was published for comment in the *Federal Register* on January 22, 2025.²

The Commission received comments on the Application.³ Each commenter either expressed support for 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.⁴ The commenters also recommended that CMESC consider changes to the Application that, among other things, would address regulatory capital concerns for participants in the

¹ 15 U.S.C. 78q-1. 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>.

² Release No. 34-102200 (Jan. 15, 2025), 90 FR 7713 (Jan. 25, 2025).

³ 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>.

⁴ See letters from Katherine Darras, General Counsel, International Swaps and Derivatives Association, dated Mar. 10, 2025, at 1 (“ISDA”); Allison Lurton, General Counsel and Chief Legal officer, FIA, dated Mar. 10, 2025, at 1 (“FIA”); Jiří Król, Deputy CEO, Global Head of Government Affairs, AIMA, dated Mar. 10, 2025, at 2 (“AIMA”); William C. Thum and Robert Toomey, SIFMA and SIFMA Asset Management Group, dated Mar. 10, 2025, at 2 (“SIFMA & AMG”).

clearing agency that are banking organizations,⁵ modify its margining practices to facilitate the withdrawal of excess margin,⁶ provide participants that are Members more control over actions taken by Users that would affect the Members' management of its financial risks,⁷ clarify certain procedures that permit a User to have a direct relationship with CMESC,⁸ and modify certain risk management and default management provisions of its proposed rules to enhance risk management and reduce cost.⁹

Section 19(a)(1) of the Exchange Act requires the Commission, within ninety days of the date of publication of notice of an application for registration as a clearing agency, or such longer period as to which the applicant consents, to, by order, grant such registration or institute proceedings to determine whether such registration should be denied.¹⁰ This order institutes proceedings under section 19(a)(1)(B) of the Exchange Act to determine whether CMESC's Application for registration as a clearing agency should be granted or denied, and provides notice of the grounds for denial under consideration by the Commission, as set forth below.

II. Description of the Application

CMESC is applying to register as a clearing agency to provide central counterparty clearing services to market participants for their secondary cash market transactions in U.S. Treasury securities and transactions in repurchase and reverse repurchase agreements involving

⁵ See, e.g., SIFMA & AMG at 2–3.

⁶ See, e.g., ISDA at 3.

⁷ See, e.g., FIA at 11. Capitalized terms not defined in this order are defined in the Application. See, e.g., Exhibit E-3 (proposed rules of the clearing agency, defining, among others, the terms Member and User).

⁸ See SIFMA & AMG at 3; FIA at 11; ISDA at 4–5.

⁹ See, e.g., ISDA at 6–7.

¹⁰ 15 U.S.C. 78s(a)(1).

U.S. Treasury securities.¹¹ The Application provides detailed information regarding how CMESC proposes to satisfy the requirements of the Exchange Act. The proposed Rules of CMESC are included as Exhibit E-3 to CMESC's Application.

The Application states that CMESC would be wholly owned by its parent company, CME Group, Inc.¹² CMESC is a corporation registered in the state of Delaware.¹³ CMESC would have its own Board of Directors, made up of at least five independent directors, one member representative, and one user representative.¹⁴ CMESC would also have several Board committees, including a Nominating Committee, Audit Committee, Regulatory Oversight Committee, and Risk Management Committee.¹⁵

CMESC's proposed Rules describe two types of participants: first, Members, which would be able to clear proprietary Eligible Securities Transactions through CMESC and to authorize Users with respect to clearing Eligible Securities Transactions through CMESC; and second, Users, which would be authorized by a Member and would be further classified as Independent Users or Supported Users. CMESC states that the primary difference between these User Types is that an Independent User is obligated to post margin and make variation payments to CMESC for its Independent User Account, whereas that obligation falls to a Supported User's authorizing Member in relation to the Supported User's Supported User Account at CMESC. For

¹¹ See Exhibit J.

¹² See Exhibit C and C-1 (narrative description of ownership and diagrams of overall CME Group structure).

¹³ See Exhibit E-1 (certificate of incorporation).

¹⁴ See Exhibit C-2 (diagram of CMESC's structure); Exhibit E-2B (Board of Directors Charter).

¹⁵ See Exhibit E-2C (Risk Management Committee Charter); E-2D (Nominating Committee Charter); E-2E (Audit Committee Charter), and Exhibit E-2F (Regulatory Oversight Committee Charter).

both types of Users, the User is directly liable to CMESC for settlement of their cleared transactions.¹⁶

A Member that authorizes a User is responsible for guaranteeing the financial performance of that User beyond the margin posted to the User's Account at CMESC, and in this respect Members, but not Users, are required to make contributions to CMESC's Guaranty Fund. A person will be admitted as a User only with the authorization of a Member and may utilize the Clearing Services as a User only for so long as it has a Member's authorization in place. In contrast to Members, CMESC does not impose direct financial responsibility requirements on User applicants and instead relies upon Members that authorize Users to determine the appropriate financial responsibility standards to impose, based on their assessment of a User's financial circumstances and their obligations to conduct due diligence of their authorized Users.¹⁷

In Exhibit J, the Application provides information regarding CMESC's risk management framework, which CMESC describes as being intended to: (i) reduce the potential impact of a participant default via credit risk management standards and ongoing monitoring, and (ii) ensure that CMESC has sufficient financial and liquidity resources to manage the default of a certain number of participants. CMESC states that it would use onboarding requirements for each of its Members to mitigate counterparty risk and would apply financial responsibility requirements to its Members. CMESC may take action against a Member for its failure to remain in compliance with such requirements. Additionally, CMESC states that it would seek to mitigate counterparty and liquidity risk through various mechanisms, including its credit rating process for Members,

¹⁶ See Exhibit J.

¹⁷ See *id.*

credit limits, daily risk monitoring, margin collection, settlement variation exchange, backtesting, and stress testing.¹⁸

With respect to risk management, the Application states that CMESC would maintain and structure a Guaranty Fund using its stress test methodology that is designed to ensure that the size of the Guaranty Fund is at least equal to the largest theoretical loss to CMESC resulting from the Default of two Member Families, covering, if applicable, a predefined number of User accounts, in extreme but plausible market conditions.¹⁹ The Application also states that CMESC would establish credit and liquidity “waterfalls” that would apply in the event of a default, to prevent losses to its Participants and minimize the potential for market disruption.²⁰

With respect to systems, the Application states that CMESC’s systems will be hosted in a virtual private cloud environment and in physical datacenters.²¹ Among other things, the Application describes CMESC’s approach to operational resilience, availability and disaster recovery, and data backup.²²

With respect to fees, the Application states that CMESC continues to engage the marketplace on its ultimate fee structure, which it plans to finalize as it approaches the launch date for operating its clearing agency. The Application also states that cleared repo and cleared U.S. Treasuries services that it offers will operate in a competitive environment, which in turn is expected to impact fees, and that fees for Members and Users will be published on CMESC’s

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ *See id.*

²¹ *See* Exhibit K; Exhibit M.

²² *See* Exhibit M.

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.²³

III. Proceedings to Determine Whether to Grant or Deny the Application and Grounds for Potential Denial Under Consideration

To grant CMESC's request to register as a clearing agency, the Commission must find that the Application satisfies the requirements of the Exchange Act and the rules and regulations thereunder, including the determinations set forth in paragraphs (A) through (I) of section 17A(b)(3) of the Exchange Act.²⁴ In addition, pursuant to section 17A of the Exchange Act, the Commission is directed, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents, to use its authority to: (i) facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempt securities); and (ii) facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities in accordance with the findings and to carry out the objectives set forth in section 17A.²⁵

To support its analysis under the above statutory directives and required determinations, the Commission is instituting proceedings pursuant to section 19(a)(1)(B) of the Exchange Act to determine whether to grant or deny the Application.²⁶ Institution of such proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the

²³ See Exhibit E-5.

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

²⁵ 15 U.S.C. 78q-1(a)(2)(A).

²⁶ 15 U.S.C. 78(s)(a)(1)(B).

Application and provide the Commission with arguments and data to support the Commission's analysis as to whether to grant or deny the Application.

Pursuant to section 19(a)(1)(B) of the Exchange Act,²⁷ the Commission is providing notice of the grounds for denial under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Application's consistency with the requirements of section 17A of the Exchange Act and the rules and regulations thereunder. Below the Commission summarizes each of the statutory findings required by section 17A(b)(3) of the Exchange Act and, in some instances, provides specific requests for comment regarding the findings as applied to the Application, including with respect to Commission rules that would apply to CMESC as a registered clearing agency.

A. Section 17A(b)(3)(A): Organization and Capacity

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 this section.

²⁷ *Id.*

As discussed in Part II, the Application proposes that CMESC would be wholly owned by its parent company, CME Group, Inc.²⁸ Under this structure, the Application proposes that CMESC's parent company serve as its sole shareholder and operate as its primary service provider in the provision of its services as a registered clearing agency. To assist the Commission in determining whether CMESC is so organized and has the capacity to facilitate prompt and accurate clearance and settlement, the Commission seeks comment on whether CMESC's proposed legal,²⁹ governance,³⁰ and operational arrangements³¹ enable CMESC to satisfy the requirements of the Exchange Act and Commission rules and regulations thereunder.

B. Section 17A(b)(3)(B): Membership Standards

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

²⁸ See *supra* notes 12–15 and accompanying text.

²⁹ See 17 CFR 240.17ad-22(e)(1) (requiring a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions).

³⁰ See, e.g., 17 CFR 240.17ad-22(e)(2) (requiring a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things: are clear and transparent; clearly prioritize the safety and efficiency of the covered clearing agency; support the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants; establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities; specify clear and direct lines of responsibility; and consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency); 240.17ad-25(b) (establishing requirements related to the composition of the board of directors); 240.17ad-25(i) (establishing requirements related to the management of risks from relationships with service providers for core services).

³¹ See, e.g., 17 CFR 240.17ad-22(e)(17) (requiring a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by: identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls; ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity; and establishing and maintaining a business continuity plan that addresses events posing a significant risk of disrupting operations).

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.³²

As discussed in Part II,³³ the Application proposes a novel structure with two types of participants, Members and Users. Members would be able to clear proprietary Eligible Securities Transactions through CMESC and to authorize Users with respect to clearing Eligible Securities Transactions through CMESC, and Users would be authorized by a Member and would be further classified as Independent Users or Supported Users.³⁴ The Application also describes how this structure affects its framework for managing financial risk.³⁵ To assist the Commission in determining whether the Application establishes membership requirements consistent with the above statutory standard, the Commission seeks 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 types of Users such that, the Application has policies and procedures that establish objective, risk-based, and publicly disclosed criteria for participation and which require participants to have sufficient financial resources and robust operational capacity.³⁶

³² 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.

³³ *See supra* notes 16–20 and accompanying text.

³⁴ *See supra* note 16 and accompanying text.

³⁵ *See supra* notes 18–20.

³⁶ *See, e.g.*, 17 CFR 240.17ad-22(e)(18) (requiring a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants; require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency; monitor compliance with such participation requirements on an ongoing basis; and, when the covered clearing

C. Section 17A(b)(3)(C): Fair Representation

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.³⁷

To assist the Commission in evaluating whether the Application is consistent with the above standard for fair representation, the Commission seeks comment on whether CMESC's proposed governance arrangements are designed to (i) facilitate adequate oversight by the board of CMESC's operations,³⁸ (ii) mitigate conflicts of interest,³⁹ and (iii) solicit the views of clearing members and other relevant stakeholders.⁴⁰

D. Section 17A(b)(3)(D) and (E): Fees

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. Section

agency provides central counterparty services for transactions in U.S. Treasury securities, ensure, among other things, that it has 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); 240.17ad-22(e)(19) (requiring a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities).

³⁷ 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.

³⁸ *See, e.g.*, 17 CFR 240.17ad-22(e)(2); 240.17ad-25(b) (establishing requirements for the composition of the board of directors); 240.17ad-25(i) (establishing requirements for the management of risks from relationships with service providers for core services).

³⁹ *See, e.g.*, 17 CFR 240.17ad-25(g) (establishing requirements related to conflicts of interest); 240.17ad-25(h) (establishing requirements regarding the obligation of directors to report conflicts).

⁴⁰ *See, e.g.*, 17 CFR 240.17ad-22(e)(2)(iii) and (vi); 240.17ad-25(j).

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.

As discussed in Part II, CMESC's Application does not include a fee schedule or schedule of prices, stating that CMESC continues to engage the marketplace on its ultimate fee structure, and that 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.⁴¹

1. What information could CMESC provide that would help the Commission evaluate whether its fees are equitably allocated and reasonable, consistent with the findings required by Section 17A(b)(3)(D)?

E. Section 17A(b)(3)(F): Rules Designed to Promote Prompt and Accurate Clearance and Settlement and the Safeguarding of Securities and Funds

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

⁴¹ See *supra* note 23 and accompanying text.

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

1. The Application describes CMESC's risk management practices, including, for example, its system for margin collection, risk surveillance, and the rules pursuant to which CMESC would manage the default of multiple participants, including both Members and Users. Do the rules lay out in sufficient detail CMESC's risk management practices, including the process by which CMESC would liquidate the portfolios of multiple Members and Users and how it would replenish financial resources after doing so?
2. In its Application, CMESC proposes to apply at least a two-day margin period of risk ("MPOR") to liquidate the portfolio of a defaulting participant. In the market for U.S. Treasury securities, is it reasonable for CMESC to assume, when calculating and collecting margin, that it could liquidate the portfolio of a defaulting participant, or multiple defaulting participants, within two days? What are the significant factors and circumstances that would assist the Commission in assessing whether a two-day MPOR is appropriate as described in the Application? Please explain.

F. Section 17A(b)(3)(G) and (H): Participant Discipline

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 section 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. 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.⁴²

The Commission seeks comment as to whether CMESC's rules regarding a cease-to-act decision provide a fair procedure with respect to a participant for whom CMESC would cease to act and its affected counterparties.

G. Section 17A(b)(3)(I): Competition

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. The Commission seeks comment as to whether CMESC's application is consistent with the statutory standard in Section 17A(b)(3)(I) of the Exchange Act.

⁴² Section 17A(b)(3)(H) of the Exchange Act also states that the rules of the clearing agency be in accordance with the provisions of Section 17A(b)(5) of the Exchange Act.

IV. Request for Written Comment

The Commission requests that interested persons provide written views and data with respect to CMESC's Application and the questions included above or other relevant issues.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form

(<http://www.sec.gov/rules/other.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number 600-44 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number 600-44. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/other.shtml>). Copies of the Form CA-1, all subsequent amendments, all written statements with respect to the Form CA-1 that are filed with the Commission, and all written communications relating to the Form CA-1 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Do not include personal identifiable information in submissions; you should submit only information that you wish to

make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number 600-44 and should be submitted on or before [INSERT DATE 21 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

By the Commission.

Stephanie Fouse,

Assistant Secretary.