

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105562; File No. 600-39]

Paxos Securities Settlement Company, LLC; Order Granting an Application for Temporary Registration as a Clearing Agency under Section 17A of the Securities Exchange Act of 1934

May 27, 2026.

I. Introduction

On July 14, 2025, Paxos Securities Settlement Company, LLC (“PSSC”) filed with the Securities and Exchange Commission (“Commission”) an application on Form CA-1 (“Application”) under Section 17A of the Securities Exchange Act of 1934 (“Exchange Act”) seeking to register as a clearing agency to provide clearance and settlement services as a central securities depository (“CSD”) and securities settlement system.¹ Notice of the Application was published for comment in the *Federal Register* on August 6, 2025.² On November 4, 2025, the Commission instituted proceedings pursuant to Section 19(a)(1)(B) of the Exchange Act to determine whether to grant or deny the Application.³ On January 30, 2026, the Commission designated a longer period for Commission action on the OIP.⁴

¹ 15 U.S.C. 78q-1. If PSSC determines in the future to provide other clearing agency services or to perform the functions of a clearing agency for transactions in other types of securities, PSSC would need to amend its application on Form CA-1 to so reflect and submit any related proposed rule changes as required under Section 19(b) of the Exchange Act. For a discussion of the securities eligible for settlement by PSSC, see *infra* Part III.A.3.

² Release No. 34-103624 (Aug. 1, 2025), 90 FR 37940 (Aug. 6, 2025).

³ Release No. 34-104174 (Nov. 4, 2025), 90 FR 51416 (Nov. 17, 2025) (“OIP”).

⁴ Release No. 34-104757 (Jan. 30, 2026), 91 FR 4974 (Feb. 3, 2026).

On February 27, 2026, PSSC filed an amendment to its Application that, pursuant to Rule 17Ab2-1(d),⁵ served as PSSC’s consent to extend the time for the Commission’s review of the Application to 90 days from the filing of the amendment.⁶ Notice of the amendment to the Application was published on March 11, 2026.⁷

The Commission received two comment letters on the Application,⁸ as well as a response letter from PSSC.⁹ One comment letter expressed support for innovation and competition generally and expressed support for approval of the Application specifically.¹⁰ Another comment letter, by the Depository Trust and Clearing Corporation (“DTCC”), expressed support for the development of innovative solutions to enhance the efficiency and effectiveness of financial markets and also sought clarity regarding PSSC’s approach to corporate actions processing, its proposed netting arrangement, and the sufficiency of its recovery and wind-down plans under Commission rules.¹¹ In its response letter, PSSC explained that it and DTCC are in discussion regarding PSSC’s application to become a participant in The Depository Trust Company

⁵ 17 CFR 240.17ab2-1(d) (“Rule 17Ab2-1”).

⁶ Non-confidential aspects of the Application and the 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/pssc-form-ca-1>. References to the Application throughout this order refer to the Application as amended on February 27, 2026.

⁷ Release No. 34-104977 (Mar. 11, 2026), 91 FR 12660 (Mar. 16, 2026) (“Notice of Amendment”). The Notice of Amendment summarizes the changes made to the Application by the amendment, which included modifications to Exhibits C, E, and J.

⁸ Letter from Matt Billings, Vice President of Brokerage, President, Robinhood Markets, Inc., dated Oct. 7, 2025 (“Robinhood Letter”); letter from Brian Steele, Managing Director, President, DTCC Clearing & Securities Services, The Depository Trust and Clearing Corporation, dated Mar. 31, 2026 (“DTCC Letter”). The public comment file for the Application is available on the Commission’s website at: <https://www.sec.gov/comments/600-39/600-39.htm>.

⁹ Letter from Chad Cascarilla, Chief Executive Officer, Paxos Securities Settlement Company, LLC, dated April 16, 2026 (“PSSC Response Letter”).

¹⁰ Robinhood Letter at 1.

¹¹ DTCC Letter at 1, 2–4.

(“DTC”),¹² and that it welcomes good faith engagement with DTCC regarding its DTC participant application and planned clearing agency operations as a new market entrant.¹³ It also addresses each of the topics raised in the DTCC Letter. The comment letters and PSSC’s response thereto are discussed further in Part III.

On April 28, 2026, PSSC requested that the Commission grant temporary registration pursuant to Rule 17Ab2-1(c). This order grants PSSC’s Application and request for temporary registration as a clearing agency with an exemption from Sections 17A(b)(3)(A) and 17A(b)(3)(F) of the Exchange Act for a period not to exceed 18 months, for the reasons set forth below.

II. Statutory Standard for Registration as a Clearing Agency

Clearing agencies are broadly defined under the Exchange Act and undertake a variety of functions,¹⁴ including providing the services of a CSD.¹⁵ Pursuant to Section 17A of the Exchange Act and Rule 17Ab2-1 thereunder, an entity that meets the definition of a clearing agency must register with the Commission.¹⁶ Section 17A(b)(1) also states that, upon the Commission's motion or upon a clearing agency's application, the Commission may conditionally or unconditionally exempt a clearing agency from any provisions of section 17A or the rules or regulations thereunder if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of section 17A, including

¹² DTC, a subsidiary of DTCC, is a clearing agency registered with the Commission that provides central securities depository services. *See* DTCC Letter at 1.

¹³ PSSC Response Letter at 2.

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

¹⁵ *See* 17 CFR 240.17ad-22(a)(2) (defining “central securities depository”).

¹⁶ 15 U.S.C. 78q-1(b); 17 CFR 240.17ab2-1 (“Rule 17Ab2-1”).

the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.¹⁷

In addition to the requirements set forth in Rule 17Ab2-1, Section 19(a)(1) of the Exchange Act establishes the standard for Commission review of an application for registration as a clearing agency. Pursuant thereto, the Commission shall grant registration of a clearing agency if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to the applicant are satisfied.¹⁸ The Commission shall deny such registration if it does not make such finding.¹⁹

The requirements of the Exchange Act applicable to clearing agencies are set forth in Section 17A of the Exchange Act and the rules and regulations thereunder.²⁰ Accordingly, to grant PSSC's Application for registration as a clearing agency, the Commission must find that the Application satisfies the requirements of Section 17A(b) of the Exchange Act and rules and regulations thereunder, including the determinations set forth in paragraphs (A) through (I) of Section 17A(b)(3) of the Exchange Act.²¹ Pursuant to Rule 17Ab2-1(c), the Commission, upon the request of a clearing agency, may grant registration of the clearing agency but exempt the registrant from one or more of the requirements as to which the Commission is directed to make

¹⁷ 15 U.S.C. 78q-1(b)(1)

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

¹⁹ 15 U.S.C. 78s(a)(1).

²⁰ Rules for registered clearing agencies include recordkeeping requirements, 17 CFR 240.17a-1; the filing process for proposed rule changes, 17 CFR 240.19b-4; rules addressing operations and risk management, governance and conflicts of interest, and plans for recovery and wind-down at, respectively, 17 CFR 240.17ad-22 ("Rule 17Ad-22"), 240.17ad-25 ("Rule 17Ad-25"), and 240.17ad-26 ("Rule 17Ad-26"); and the requirements set forth in Regulation Systems Compliance and Integrity, 17 CFR 242.1000 *et seq.* ("Regulation SCI"). The Commission conducts ongoing monitoring of registered clearing agencies through its supervisory program for registered clearing agencies. The Commission also assesses compliance with Commission rules by conducting examinations and investigations. *See* 15 U.S.C. 78q(b); 15 U.S.C. 78u(a).

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

a determination pursuant to Section 17A(b)(3) of the Exchange Act, provided that any such registration shall be effective only for eighteen months from the date the registration is made effective (or such longer period as the Commission may provide by order).²²

After a clearing agency's application for registration is granted, the clearing agency must continue to satisfy the requirements of the Exchange Act and the rules and regulations thereunder. In the context of temporary registration, the clearing agency must satisfy the requirements of the Exchange Act and the rules and regulations thereunder, except as to requirements, rules, or regulations to which an exemption has been provided. The Commission has explained that "[a]n approval of clearing agency registration does not mean that no further modifications of the applicant's rules, systems, procedures, or practices are needed."²³ Rather, the Commission stated that a registered clearing agency's obligation to continue to satisfy the requirements of the Exchange Act and the rules and regulations thereunder means that [even] "[t]he self-regulatory obligations of [a] fully registered clearing agenc[y] cannot end" after registration.²⁴ To ensure such compliance, the Commission stated that it "will continue to use its oversight, inspection, and enforcement authority as necessary and appropriate to further the purposes of the [Exchange] Act."²⁵

²² See 17 CFR 240.17ab2-1(c)(1); see also, e.g., Release No. 34-25740 (May 24, 1988), 53 FR 19839 (May 31, 1988) (granting temporary registration to the Government Securities Clearing Corporation in 1988 for a period of 36 months) ("GSCC Order").

²³ See Release No. 34-69838 (June 24, 2013), 78 FR 39027, 39029 (June 28, 2013) ("FICC Registration") (approving an application by the Fixed Income Clearing Corporation ("FICC") for permanent registration as a clearing agency).

²⁴ See Release No. 34-20221 (Sept. 23, 1983), 48 FR 45167, 45171 (Oct. 3, 1983) (approving nine applications for permanent registration as a clearing agency).

²⁵ *Id.*

III. Review of Application under Statutory Standard for Registration

Consistent with the requirements in Sections 17A and 19(a)(1) of the Exchange Act described above, the Commission below analyzes the Application against each of the statutory requirements under Sections 17A(b)(3)(A) through (I) to be registered as a clearing agency.²⁶

A. Organization and Capacity

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

Section 17A(b)(3)(A) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that such clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of the Exchange Act and the rules and regulations thereunder, to enforce (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of the Exchange Act) compliance by its participants with the rules of the clearing agency, and to carry out the purposes of Section 17A of the Exchange Act.²⁷

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

²⁶ See 15 U.S.C. 78q-1(b)(3)(A)–(I) (describing the statutory determinations that the Commission must make regarding the rules and structure of a clearing agency to grant registration). In 1980, the Commission published a statement of the views and positions of Commission staff regarding the requirements of Section 17A. See Release No. 34-16900 (June 17, 1980), 45 FR 41920 (June 23, 1980) (“Standards Release”).

²⁷ 15 U.S.C. 78q-1(b)(3)(A).

operating as a clearing agency.²⁸ Rather, the Commission assesses whether PSSC is *so organized* and *has the capacity to* comply with the provisions of the Exchange Act and the rules and regulations thereunder,²⁹ by analyzing PSSC’s organization and governance, as well as its operational arrangements.³⁰ Under this standard, the registration of a clearing agency “depends on a prediction about compliance with the law.”³¹ Section 17A assumes that “an applicant would produce a business plan that, if faithfully executed, would comply” with the Exchange Act.³² To make its required statutory determination under Section 17A(b)(3)(A), the Commission must “find[] that the applicant is *able* and *likely* to comply,” and upon registration and commencement of operations as a registered clearing agency, compliance with Section 17A(b)(3)(A) “is likely to be carried out.”³³

²⁸ See *supra* notes 23–24 and accompanying text (explaining that approval of clearing agency registration does not mean that no further modifications of the applicant’s rules, systems, procedures, or practices are needed and that the obligations of a fully registered clearing agency cannot end after registration).

²⁹ With respect to PSSC’s ability to safeguard securities and funds for which it is responsible, the Commission addresses that topic in Part III.E, in conjunction with discussing Section 17A(b)(3)(F) of the Exchange Act, which requires, among other things, that the rules of the clearing agency are designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. With respect to PSSC’s ability to enforce compliance by its participants with the rules of the clearing agency, the Commission addresses that topic in Part III.F, in conjunction with discussing Section 17A(b)(3)(G) of the Exchange Act, which requires that the rules of the clearing agency provide that its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency.

³⁰ In Part III.E, the Commission further analyzes PSSC’s capacity to conduct risk management consistent with the statutory requirements for safeguarding securities and funds set forth in Section 17A(b)(3)(F) of the Exchange Act.

³¹ *Bd. of Trade of City of Chicago v. S.E.C.*, 883 F.2d 525, 533 (7th Cir. 1989) (vacating Delta Government Options Corporation (“Delta”)’s temporary registration as a clearing agency and remanding to the Commission to decide whether Delta’s proprietary trading system would operate as an unregistered national securities exchange in violation of Sections 5 and 6 of the Exchange Act).

³² *Id.* at 533–34.

³³ *Id.* at 534 (emphasis in original).

2. Summary of Organization and Governance

PSSC is a limited liability company formed under Delaware law³⁴ and a wholly owned subsidiary of Kabompo Holdings, Ltd. (“Kabompo”), which is also the holding company for Paxos Holdings LLC (“Paxos Holdings”).³⁵ Kabompo is the holding company of 20 U.S. and non-U.S. subsidiaries, including PSSC.³⁶ Kabompo is incorporated in the Cayman Islands.³⁷

a) Board of Directors

PSSC’s Board would comprise ten directors.³⁸ To assist the Board, PSSC would have five Board-level committees and one Participant Advisory Committee (“PAC”).³⁹ Three of the ten directors would be “member directors,” selected by Paxos Holdings. Five directors would be “public directors,” initially specified in PSSC’s bylaws and thereafter elected annually by the PSSC’s Board from among nominees selected by the Board’s Governance Committee.⁴⁰ Two

³⁴ See Application, Exhibit E.1. PSSC was formed on June 23, 2020, and subsequently entered into a Limited Liability Company Agreement with Kabompo on October 20, 2021.

³⁵ See Application, Exhibit E.1. Paxos Holdings holds 100% of the membership interest in PSSC. See *id.* Kabompo is the sole member of Paxos Holdings. See Application, Exhibit C.1.

³⁶ See Application, Exhibit E.1. The Application describes PSSC as a wholly owned single member limited liability company, operating as a stand-alone entity with no divisions or segregable entities or subsidiaries.

³⁷ See Application, Exhibit C.2. In addition to PSSC, Kabompo, through its ownership of Paxos Holdings, is the parent holding company for a number of other U.S. and non-U.S. subsidiaries, including Paxos Trust Company (“PTC”); Paxos Technology Solutions, LLC (“PTS”); Paxos Technology Limited; Paxos Services Limited; Paxos Canada Inc.; Lomami Intermediacao (dba Paxos Brazil); Bruntal SA (dba Paxos Uruguay); Molopo, Sociedad de Responsabilidad Limitada de CV (dba Paxos Mexico); Kabompo Lending Ltd.; Paxos Digital Singapore Pte. Ltd.; Paxos Lending LLC; Paxos Issuance MENA Ltd.; Paxos Insurance Company Ltd.; Paxos Singapore Pte. Ltd.; Paxos Middle East Ltd.; Paxos Issuance Europe Oy; Castor Pollux Holdings SARL (“Castor”); and HRQ, LLC. Paxos Global PTE, Ltd. (“PTE”) is a wholly owned subsidiary of Castor. In addition, the chairman of PSSC’s Board of Directors (“Board”) would also be PSSC’s Chief Executive Officer (“CEO”) and is one of the three owners of Kabompo. Another of the three owners of Kabompo is LCV Digital Currency II, LLC. The PSSC CEO is a majority stakeholder in both Kabompo and LCV Digital Currency II, LLC. See Application, Exhibits C.1 and C.2. respectively, for more information about each of these affiliates and PSSC’s governance and ownership arrangements.

³⁸ See Application, Exhibit C.1.

³⁹ See Application, Exhibit C.2.

⁴⁰ See Application, Exhibit B.I.

directors would be “participant directors,” affiliated with a PSSC participant and nominated by participant representatives serving on the Board’s PAC. PSSC’s Board would not initially include the participant directors. PSSC’s bylaws provide that within 180 calendar days of PSSC commencing operations and having at least two participants (or a different time that is agreed to by PSSC and its PAC), two participant directors selected by the PAC would be added to the Board.⁴¹ In addition, a Board quorum for conducting business requires at least one participant director and one member director, as well as a majority of directors then serving on the Board. As a result, at no time would the member directors ever have majority voting power to control the Board as a voting block.⁴²

b) Board Committees

To assist the Board in carrying out its responsibilities, PSSC would establish five Board level committees: (i) Governance, Nominating and Policy Committee; (ii) Audit Committee; (iii) Compliance and Risk Management Committee; (iv) Business, Technology and Operations Committee; and (v) Compensation Committee. Each committee would be composed of at least one member director, one public director, and one participant director. As explained in Exhibit C.1, a member director serving as a PSSC corporate officer cannot also serve on a Board committee.

After the admission of the first participant to PSSC, the PAC would be established as a “non-Board level” advisory committee.⁴³ The charter governing the PAC requires the Chairman of the Board (“Chair”), CEO, and Secretary (or their appointees) to attend all meetings.⁴⁴ The

⁴¹ *Id.*

⁴² *See* Application, Exhibit C.1, at 12.

⁴³ Application, Exhibit C.1, at 2; *see also* Application, Exhibit E.10 (providing the PAC charter).

⁴⁴ *See* Application, Exhibit E.10.

primary function of the PAC, as specified in the charter, would be to nominate and elect the two participant directors and provide advice and recommendations to the Board regarding the needs and interests of participants, including but not limited to PSSC's governance structure, participation standards, disciplinary practices, margin practices and regulatory compliance matters. Under the charter, the PAC may by majority vote of the PAC representatives call for a meeting with the Board at any time regarding any matter.⁴⁵

c) Intercompany Agreements

PSSC would maintain a Master Intercompany Services Agreement ("MISA") under which PTE and PTS would provide certain supplemental vendor support services to PSCC.⁴⁶ PTE would provide business continuity and redundancy services, including support services related to legal, compliance, and business continuity. PTS would provide technology services and administrative support services. The technology support services include staffing, computer hardware and software, information security, communications systems, server/mainframe/infrastructure support, engineering and development services, maintenance, and operations. The administrative support services include services related to employment, legal and compliance, business continuity, tax, accounting, human resources, management of insurance needs, marketing and physical office space. The PSCC Application states that all such services would require PTE and PTS to maintain complete and accurate books and records

⁴⁵ *Id.* In addition, Exhibit C.1 of the Application also discusses how this governance structure provides fair representation among the shareholder and PSSC participants. *See* Application, Exhibit C.1, at 3–5; *see also infra* Part III.C (further discussing the fair representation standard).

⁴⁶ *See* Application, Exhibit C.4.

consistent with PSSC’s recordkeeping obligation under Exchange Act Rule 17a-1⁴⁷ and Regulation SCI.⁴⁸

PSSC states that the terms of the MISA and its internal control over procurement procedures would be designed to ensure that none of the affiliated service providers would themselves perform clearing agency functions or constitute operating any “SCI system or indirect SCI system” of PSSC, or exert material control over PSSC’s activities.⁴⁹ For example, PSSC states that the MISA provides that PTE or PTS would not be permitted to enter into an agreement to provide support services to PSSC unless such an arrangement is approved in writing by PSSC, which may be given by the CEO, Chief Financial Officer (“CFO”) or Chief Technology Officer (“CTO”) of PTE or PTS, provided that such officer is also a co-employee of PSSC.⁵⁰

d) Role of Member Directors and Dual Employees

In addition to Board participation, the Application indicates that one or more member directors may also serve on Board committees, in management positions within PSSC, or in both capacities.⁵¹ For example, pursuant to PSSC’s committee charters, at least one member director would maintain membership on each Board committee.⁵² However, as noted above and

⁴⁷ See 17 CFR 240.17a-1.

⁴⁸ Application, Exhibit C.4, at 5; see also 17 CFR 242.1000 *et seq.* (setting forth the requirements under Regulation SCI).

⁴⁹ Application, Exhibit C.1, at 4-5.

⁵⁰ *Id.*, at 6. While a number of PSSC employees are dual employees, only one of those dual employees is also a PSSC Board member (currently Chairman of the Board) and co-owner of Kabompo. See Application, Exhibit D.

⁵¹ See Application, Exhibits E.3, A, B, and D respectively. Currently, one member director is serving as the Chief Executive Officer. See Application, Exhibits A and B.

⁵² Exhibit E.3 of the Application provides a general description of participation by member directors in Board committees, and Exhibits E.4 through E.9 provide the charters for each Board committee.

explained in Exhibit C.1, a member director serving as a PSSC corporate officer cannot also serve on a Board committee.⁵³ In addition, the Chairman of the Board and the CEO (of which, both positions initially will be held by one individual that is also a member director), as well as the Secretary, also must attend all meetings of the PAC.⁵⁴

The PSSC Application also indicates that several of PSSC's key employees would serve as dual employees of PSSC and one of its affiliates, which currently includes employees acting as Treasurer, General Counsel, Chief Compliance Officer, Chief Information Security Officer, Head of Engineering, Audit and Exam Director, and in Business Development.⁵⁵

3. Summary of Operations

As described below, PSSC would, if PSSC's participant application is approved by DTC, provide clearance and settlement services as a DTC participant and through its Paxos Settlement Service ("PSS"), a private and permissioned system developed and operated by PSSC to conduct delivery versus payment ("DVP") settlement, on a bilateral basis, of securities transactions between counterparties.⁵⁶ The software related to PSS would support a distributed ledger ("Paxos Ledger") that would record the ownership of participants' eligible securities and cash. Below is a summary description of certain aspects of the Application that relate to the PSS and PSSC's proposed operations more generally.

⁵³ Application, Exhibit C.1, at VI.D.

⁵⁴ Application, Exhibit E.10 at II.C.

⁵⁵ See Application, Exhibit D.

⁵⁶ See Application, Exhibit J, at 11.

a) Counterparty Pairs

PSSC participants would not be permitted to settle settlement obligations with another participant unless the participants are a counterparty pair (“CP Pair”).⁵⁷ Only trades received by CP Pairs established pursuant to PSSC rules would be eligible for settlement in PSSC. Prior to commencing participation in PSSC, each participant would be required to notify PSSC in writing of other participants with which it agrees to settle settlement obligations in PSSC.

Correspondingly, each existing participant must notify the Company in writing whether it agrees to settle settlement obligations with the new participant. By providing such notices, participants and PSSC would agree between and among themselves that: (i) each participant will be a CP Pair of the other such participant as provided in PSSC Rules for the purposes of settling settlement obligations between them through PSSC; (ii) the settlement obligations are determined by PSSC pursuant to its rules; (iii) each participant in the CP Pair agree to be obligated to the other participant to settle the settlement obligations pursuant to PSSC Rules; and (iv) PSSC and each participant in the CP Pair will have all the rights and obligations as against each other as specified in PSSC Rules.⁵⁸

Existing PSSC participants would be permitted to elect at any time to form a CP Pair with another existing PSSC participant. Any trade submitted to PSSC for settlement that PSSC does not recognize as a CP Pair would be rejected.⁵⁹ A participant would be permitted to terminate any

⁵⁷ See Application, Exhibit E.12 (“PSSC Rules”), at Rule 2.2D; *see also* Application, Exhibit J, at 12.

⁵⁸ See PSSC Rules, at Rule 2.1D (also providing that, absent such notice, PSSC would not treat the participants as a CP Pair).

⁵⁹ PSSC Rules, at Rule 2.2D.

CP Pair by providing written notice to PSSC, which would in turn provide corresponding notice to the relevant participants and any relevant trading venue, as necessary.⁶⁰

b) Deposits of Eligible Securities and Cash

To facilitate settlement of obligations between CP Pair participants, each participant would be required to deposit eligible securities into its PSSC participant account by instructing DTC to move its securities from the PSSC participant's account at DTC to PSSC's account at DTC, which in turn would hold such securities for the benefit of the PSSC participant.⁶¹ Upon receipt, PSSC, through a process called "securities digitization," would create a security entitlement on the Paxos Ledger credited to the relevant participant's account that is a representation of the eligible security held in PSSC's DTC account. Upon instructions from a PSSC participant, PSSC would facilitate a withdrawal of securities from the participant's PSSC account by removing the security entitlement to the securities credited to that participant's account on the Paxos Ledger and initiating relevant instructions through DTC to remove the security from PSSC's DTC account and deliver it to the PSSC participant's DTC account. PSSC would not remove the security entitlement to the securities credited to the participant's PSSC account without also transferring the securities "in rapid succession" to a DTC account designated by the PSSC participant.⁶²

With regard to the deposit of cash into a PSSC participant account, PSSC would maintain two types of omnibus cash custody accounts for the benefit of participants at a settling bank: (i) an operating cash account ("Operating Cash Account") which would be used to settle PSSC

⁶⁰ PSSC Rules, at Rule 2.4D; *see also* Application, Exhibit J, at 12.

⁶¹ *See* PSSC Rules, at Rule 4.4.

⁶² *Id.*

participant settlement obligations and fees owed to PSSC,⁶³ and (ii) a margin cash account, which would be used to satisfy PSSC participants' margin obligations ("Margin Cash Account").⁶⁴ Upon receipt of cash from a participant into the Operating Cash Account or Margin Cash Account, PSSC, through a process called "cash digitization," would create a securities entitlement on the Paxos Ledger credited to the participant account that would be a representation of the cash in the Operating Cash Account or Margin Cash Account, as applicable.⁶⁵ Upon instruction from a participant, PSSC would also facilitate the withdrawal of operating cash or margin cash from the participant's account by removing the security entitlement credited to the participant in its account on the Paxos Ledger and initiating a transfer from PSSC to an account designated by the participant. PSSC would not remove the security entitlement to cash without also transferring the cash "in rapid succession" to the account designated by the participant.⁶⁶

c) Trade Submission

Trades submitted to PSSC by CP Pairs would be required to be submitted in accordance with the terms of the operating procedures of any relevant "eligible trading venue"⁶⁷ on which the transaction was executed or, if there is no eligible trading venue (*i.e.*, the trade is an over-the-

⁶³ PSSC Rules, at Rule 4.5.2. PSSC defines the term "Operating Cash Account" to mean an omnibus cash custody account at each settling bank that holds operating cash deposited by participant for the purpose of settling obligations to purchase securities from CP Pairs and to settle fees owed to PSSC. PSSC Rules, at Rule 1.

⁶⁴ PSSC Rules, at Rule 4.5.3; *see also* PSSC Rules, at Rule 13 (describing eligibility and ongoing obligations of PSSC-approved settling banks). PSSC defines the term "Margin Cash Account" to mean an omnibus cash custody account at a settling bank that is maintained in PSSC's name for the purpose of holding cash that represents the margin assets of each participant. PSSC Rules, at Rule 1.

⁶⁵ PSSC Rules, at Rule 4.5.4.

⁶⁶ *Id.*

⁶⁷ As defined in PSSC Rules, an "eligible trading venue" means a trading venue approved by and integrated by PSSC. *See* PSSC Rules, at Rule 1.

counter trade), then in near real-time by the relevant participants upon execution, and in accordance with PSSC Rules.⁶⁸ PSSC Rules specify further details regarding submissions of over-the-counter trades, requiring written notification of which participant will be designated as the submission party (“designated trade submission participant”), which in turn would trigger compliance with additional PSSC Rules.⁶⁹ If trade information from either an eligible trading venue or designated trade submission participant does not comport with PSSC Rules, PSSC would immediately notify the relevant submission source and would not accept the trade for settlement until the discrepancy is resolved and the trade is properly resubmitted.⁷⁰

d) Settlement

As mentioned above, PSSC proposes to conduct DVP settlement on a bilateral basis of settlement obligations between pre-determined CP Pairs.⁷¹ PSSC would not serve as a central counterparty to its participants and would not extend any form of intraday or overnight credit.⁷² As a result, PSSC participants would have credit exposure to only those participant counterparties that they approve in advance and would have no counterparty credit exposure to PSSC.⁷³ The Application states that participants would have the ability to process settlements on the trade date that is a Business Day (T+0), on the Business Day after the trade date (T+1), or on any other Business Day after the trade date as they may agree.⁷⁴

⁶⁸ PSSC Rules, at Rule 4.7; *see also* Application, Exhibit J, at 14–15. If the submission comports with Rule 4, PSSC would not make any modification to the transaction detail as submitted. *Id.*

⁶⁹ PSSC Rules, at Rule 4.7.

⁷⁰ *Id.*

⁷¹ All transactions accepted by PSSC would settle bilaterally on a net basis per CP Pair, unless both participants in that CP Pair notify PSSC prior to acceptance of the transaction that the participants have elected to have a specified transaction settled on a gross basis. PSSC Rules, at Rule 4A.

⁷² Application, Exhibit J, at 3.

⁷³ *Id.*

⁷⁴ Application, Exhibit J, at 25; *see also* PSSC Rules, at Rule 4.10.

Settlement would occur through the movement of cash and eligible securities on the Paxos Ledger between the relevant participant accounts maintained by PSSC.⁷⁵ To meet settlement obligations, each participant would be required to have the securities or cash in its participant account with PSSC no later than the “Daily Settlement Cut-Off Time” on the relevant settlement date.⁷⁶ Participants, however, would not be required to fund securities or cash in advance of the relevant date.⁷⁷

On a continuous basis over the course of the settlement date, beginning at 12:00 a.m. on each given settlement date, PSSC would settle any pending settlement obligation when the relevant security entitlements to cash and eligible securities become available on the Paxos Ledger.⁷⁸ At settlement, the entitlements to the relevant cash and eligible securities would be transferred between the participant accounts to record the settlement on the Paxos Ledger.⁷⁹ At least daily, each participant would be required under PSSC Rules to reconcile its settlement obligations and any other activity that occurs in PSS based on any related reports made available to the participant from PSSC, and promptly report any discrepancies.⁸⁰ Once settlement is final, participants would have immediate access to settlement proceeds and would not need to wait until the end-of-day batch processes have been completed before accessing such proceeds.⁸¹

⁷⁵ See Application, Exhibit J, at 3–4.

⁷⁶ PSSC Rules, at Rules 4.9 and 6.1. The term “Daily Settlement Cut-Off Time” is defined to mean 3:10 p.m. and is the time by which a participant is required to make sufficient operating cash or securities available in its participant account to facilitate timely settlement of its obligations on settlement date. PSSC Rules, at Rule 1. The definition provides PSSC flexibility to specify a different cut-off time as may be necessary to accommodate exceptional circumstances. Unless otherwise noted, all references to a specific time in the PSSC Rules means Eastern Time. PSSC Rules, at Rule 1A.

⁷⁷ *Id.*

⁷⁸ Application, Exhibit J, at 3–4 and 25.

⁷⁹ Application, Exhibit J, at 4; *see also* PSSC Rules, at Rule 6.1.

⁸⁰ See PSSC Rules, at Rule 4.13.

⁸¹ Application, Exhibit J, at 2.

After settlement, PSSC would permit participants to withdraw the settled cash and eligible securities, while also allowing for any residual cash or securities to remain digitized and available for use to meet the participant's settlement obligation.⁸²

On the settlement date, PSSC would use its settlement prioritization rules to determine the order in which to use a participant's available operating cash (*i.e.*, cash from the Cash Operating Account) and securities to settle the participant's outstanding settlement obligations.⁸³ As described in more detail below, PSSC would first settle all settlement obligations that represent "Close-Out Liability Obligations."⁸⁴ Any Close-Out Liability Obligation that PSSC has started to settle but that remains partially settled would be completed before settlement of any Close-Out Liability Obligations that have not been partially settled. If the order of priority for settlement cannot be determined based on whether the Close-Out Liability Obligations have been partially settled, then priority for settlement would be according to the largest remaining Close-Out Liability Obligation ranked in descending order.⁸⁵ If the order of priority for settlement cannot be determined based on whether the Close-out Liability Obligations have been partially settled or based on the size of the exposures in descending order, then the priority for settlement would be according to a random order determined in "lexicographical order" using an identifier that is assigned by PSSC to each Close-Out Liability Obligation at the time it is recorded on PSSC's books and records.⁸⁶

⁸² *Id.*

⁸³ Application, Exhibit J, at 26–29; *see also* PSSC Rules, at Rule 6.1.2.

⁸⁴ A Close-Out Liability Obligation is defined as a cash settlement obligation created by PSSC that is due to be paid by a failing participant to a non-failing participant in relation to the relevant non-failing participant's "Close-Out Execution." PSSC Rules, at Rule 1.

⁸⁵ Application, Exhibit J, at 26; *see also* PSSC Rules, at Rule 6.7.

⁸⁶ *Id.*; *see also* PSSC Rules, at Rule 6.1.2.1.

Second, PSSC would prioritize Settlement Failures, which would be prioritized in descending order from “oldest age to youngest” based on the original settlement date.⁸⁷ When the settlement obligations that represent a Settlement Failure for which the priority of the fail cannot be determined solely based on age, PSSC would use available cash or securities, as applicable, in the participant’s accounts in the following order: (i) any settlement obligation that PSSC has started to settle but remains partially settled would be completed before any settlement obligation that has not been partially settled; (ii) if the order of priority for settlement cannot be determined based on whether the settlement obligations have been partially settled, then priority for settlement will be according to the largest remaining exposure measured by dollar value and ranked in descending order; and (iii) if the order of priority for settlement cannot be determined based on whether the settlement obligations have been partially settled or based on notional exposures measured by dollar value, then the priority for settlement will be according to the random ordering determined in lexicographical order using an identifier that is assigned by the company to each settlement obligation at the time it is recorded on PSSC’s books and records.⁸⁸

Third, after all outstanding Settlement Failures have been settled using the available cash or securities in a participant’s account, PSSC would next settle all settlement obligations that are not Settlement Failures in the order specified above for Settlement Failures.⁸⁹

⁸⁷ Application, Exhibit J, at 27; *see also* PSSC Rules, at Rule 6.1.2.1. Under PSSC Rule 1, “Settlement Failure” means “a Settlement Obligation for which a Participant fails to make sufficient Operating Cash or Eligible Securities available in its Participant Account on a Settlement Date by the Daily Settlement Cut-Off Time.”

⁸⁸ Application, Exhibit J, at 27; *see also* PSSC Rules, at Rule 6.1.2.4.

⁸⁹ Application, Exhibit J, at 27; *see also* PSSC Rules, at Rule 6.1.2.3.

e) Failure to Deliver Cash or Securities and Defaults

The failure of any participant to have sufficient cash or securities in its PSSC account by the Daily Settlement Cut-Off Time on settlement date would constitute a Settlement Failure, which would subject the participant to certain fines as specified under PSSC Rules.⁹⁰ In addition, PSSC would impose certain fees and surcharges on responsible participants for Settlement Failures in accordance with its fee schedule⁹¹ and certain margin charges in accordance with its rules.⁹² Each Settlement Failure would be allocated to the relevant non-failing participant in the CP Pair following the Daily Settlement Cut-Off Time on settlement date.⁹³ PSSC would make available to participants in a CP Pair a report that reflects the existence of any Settlement Failure.⁹⁴

Except as otherwise provided in its rules, PSSC would continue to attempt to settle any outstanding Settlement Failure using any operating cash (*i.e.*, cash available in the Operating Cash Account) or securities that become(s) available in the failing participant's account until such time as the settlement obligation has been settled or closed out through a "buy-in or sell-out" process (*i.e.*, a close-out execution).⁹⁵ A Settlement Failure relating to a participant's obligation to deliver operating cash where there is not any corresponding settlement obligation of a CP Pair to deliver securities to the failing participant (which may arise in connection with the Enhance Netting Process described below) would *not* be governed by PSSC's close-out

⁹⁰ Application, Exhibit J, at 25–26; *see also* PSSC Rules, at Rule 6.2.

⁹¹ PSSC Rules, at Rule 6.2.2.

⁹² *See* PSSC Rules, at Rules 6.2.3 and 5.4B.

⁹³ PSSC Rules, at Rule 6.2.

⁹⁴ *Id.*

⁹⁵ PSSC Rules, at Rule 6.2.1.

requirements.⁹⁶ Instead such Settlement Failure would be a Close-Out Liability Obligation, subject to PSSC’s settlement prioritization process.⁹⁷

PSSC Rules state that the close out requirements are designed to require participants to responsibly manage Settlement Failures.⁹⁸ A close-out execution may be either a buy-in (in the case of a Settlement Failure regarding securities) or a sell-out (in the case of a Settlement Failure involving cash) and may be discretionary or mandatory. Unless and until a Settlement Failure is settled, a non-failing participant may close-out the Settlement Failure by the failing participant after delivering notice to PSSC and the failing participant of its intent to close-out the Settlement Failure (“Notice of Intent to Close-Out”), otherwise referred to in PSSC Rules as a “Discretionary Close-Out Execution.”⁹⁹ A non-failing participant must close-out a Settlement Failure by a failing participant where it receives notice from PSSC that a participant has failed to satisfy a margin requirement, otherwise referred to in PSSC Rules as a “Mandatory Close-Out Execution.”¹⁰⁰ In such a case, the non-failing participant must close-out the Settlement Failure not later than the daily settlement cut-off time on the second business day after the notice is provided.¹⁰¹

⁹⁶ Application, Exhibit J, at 26; *see also*, PSSC Rules, at Rule 6.2.1. PSSC distinguishes between close-out requirements, which are governed by Rules 6.3, 6.4, and 6.5, and a Close-Out Liability Obligation, which is governed by Rules 6.6 and 6.7.

⁹⁷ *See* PSSC Rules, at Rule 6.1.2.

⁹⁸ PSSC Rules, at Rule 6.3.

⁹⁹ *Id.*; *see also* Application, Exhibit J, at 27–29. In both a Discretionary and Mandatory Close-Out Execution, the non-failing participant must provide Notice. The Notice must include specified information, including counterparty, quantity, price, net money paid/received, trade date, settlement date, identification of the Settlement Fail to which the close out relates, (e.g., CUSIPs and money difference between the Settlement Fail and the Close-Out Execution).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

Upon receipt of a Notice of Intent to Close Out for either a Discretionary or Mandatory Close-Out Execution, PSSC would “as soon as technologically practicable” cease to attempt to use operating cash or securities that become available in the failing participant’s account to settle any outstanding Settlement Failure specified in the Notice of Intent to Close Out. Any non-failing participant effecting a Discretionary or Mandatory Close-Out will provide notice to PSSC and the failing participant immediately following, and in no event more than two hours after, the relevant Close-Out Execution. If the non-failing participant does not complete the Mandatory Close-Out Execution by the Daily Settlement Cut-Off Time on the second business day after the Notice of Intent to Close Out is provided or if for any reason effecting such execution is not permitted (as may be the case if both participants in a CP Pair are defaulting participants), PSSC will fix a cash settlement value for the quantity of the securities not bought-in or sold-out through a Close-Out Execution. The value fixed by PSSC will be final and not subject to review.¹⁰²

Any non-failing participant effecting a Discretionary or Mandatory Close-Out would be required to provide notice to PSSC and the failing participant immediately following, and in no event more than two hours after, the relevant Close-Out Execution (“Close-Out Execution Notice”).¹⁰³ Upon receiving a Close-Out Execution Notice¹⁰⁴ from a non-failing participant and/or fixing a cash settlement value pursuant to PSSC Rules, PSSC would create a Close-Out Liability Obligation due for settlement on the next business day. The Close-Out Liability Obligation would obligate the failing participant to pay the amount of the difference, if any, in

¹⁰² Application, Exhibit J at 28–29; *see also* PSSC Rules, at Rule 6.5.

¹⁰³ PSSC Rules, at Rule 6.4.2.

¹⁰⁴ The term “Close-Out Execution Notice” is defined to mean a notice, which is provided by a participant effecting a Close-Out Execution, to PSSC that must comply with the requirements set forth in Rule 6. PSSC Rules, at Rule 1.

favor of the non-failing participant between the value of the Settlement Failure and the value, as applicable, of the Close-Out Execution or cash settlement value fixed by PSSC that is deemed to be the value obtained in a Mandatory Close-Out Execution.¹⁰⁵

In the event that a Participant incurs a Settlement Failure regarding a Close-Out Liability Obligation, the participant would be considered a “Defaulting Participant” under PSSC Rules,¹⁰⁶ and PSSC would immediately use the margin assets of such participant to settle all Close-Out Liability Obligations of the participant. PSSC would apply the margin assets on a pro rata basis across all Close-Out Liability Obligations of the Defaulting Participant in respect of all CP Pairs across any and all applicable non-Defaulting Participant counterparties to settle or partially settle open Close-Out Liability Obligations.¹⁰⁷

For any Close-out Liability Obligation not fully settled after PSSC has applied available assets, each participant in such CP Pair would have the discretion to pursue recovery of the amount of the final value against the failing participant as between themselves and any such process would not be governed by PSSC Rules.¹⁰⁸ Accordingly, in the event of a counterparty default, non-defaulting participants may need to pursue a private action to seek restitution from their defaulting participant counterparty.

f) Netting

Although PSSC would not operate as a central counterparty, PSSC proposes as part of its settlement system to provide two types of netting arrangements: (i) bilateral netting in CP Pairs

¹⁰⁵ PSSC Rules, at Rule 6.6.

¹⁰⁶ “Defaulting Participant” means a Participant that incurs a Settlement Failure of a Close-Out Liability Obligation as described in Rule 6, or a Participant that fails to satisfy a margin call as described in Rule 5C. PSSC Rules, at Rule 1.

¹⁰⁷ PSSC Rules, at Rule 6.7.

¹⁰⁸ PSSC Rules, at Rule 6.7; *see also* Application, Exhibit J, at 29.

and (ii) enhanced netting across CP Pairs.¹⁰⁹ With the exception of transactions accepted for gross settlement, all transactions accepted by PSS for clearance and settlement would be settled bilaterally on a net basis per CP Pair.¹¹⁰ Specifically, through the process of bilateral netting, transactions accepted to PSS would create settlement obligations that are netted for each participant such that, for each security in which the participant has activity, the participant will have one obligation to deliver securities or cash for each CP Pair for which there is an obligation.¹¹¹

Participants would be permitted to request that PSSC further net settlement obligations among CP Pairs through a process of “enhanced netting” provided that: (i) each participant included in the enhanced netting is part of a CP Pair with each other participant included in the enhanced netting and (ii) the enhanced netting does not result in an increased settlement or margin obligation to any participant.¹¹² Where enhanced netting is applied, the resulting settlement obligation of each participant would be in the amount and to the participant(s) determined by the enhanced netting process. PSSC has provided several examples as to how the enhanced netting process would work under specific scenarios.¹¹³

PSSC also would permit gross settlement for any CP Pair. Pursuant to written instructions from each participant in the CP Pair provided to PSSC prior to the acceptance of a specified

¹⁰⁹ See PSSC Rules, at Rule 4A.

¹¹⁰ PSSC Rules, at Rule 4.1A; *see also* Application, Exhibit J, at 15.

¹¹¹ PSSC Rules, at Rule 4.1A.

¹¹² PSSC Rules, at Rule 4.2A.

¹¹³ See Application, Exhibit J, at 16–18.

transaction for clearance and settlement, PSSC would create gross settlement obligations for the participants, which would be due on settlement date.¹¹⁴

g) Risk Management

As noted above, PSSC would not serve as a central counterparty to PSSC participants and would not extend any form of intraday or overnight credit.¹¹⁵ As a result, the Application states that PSSC participants would have credit exposure to only those participant counterparties that they approve in advance and would have no counterparty credit exposure to PSSC.¹¹⁶

Upon commencing participation in PSSC, each participant would be required to deposit and maintain an “initial margin deposit,” as determined by the Compliance and Risk Management Committee and in connection with an applicant’s admission as a participant.¹¹⁷ Factors used by the committee to determine the initial margin deposit would include credit worthiness, anticipated or actual settlement obligations, trading strategy and operational capabilities.¹¹⁸ Participants would also be required to maintain a “minimum required margin deposit” of \$10,000, which may be increased based on the factors used to determine the initial margin deposit.¹¹⁹ PSSC would not accept new transactions for settlement unless and until the minimum required margin deposit is met.¹²⁰

Pursuant to PSSC Rules, the “required margin amount” (“RMA”) is defined as the greater of the initial margin deposit, the minimum required margin deposit and the “computed margin

¹¹⁴ PSSC Rules, at Rule 4.3A.

¹¹⁵ Application, Exhibit J, at 3.

¹¹⁶ *Id.*

¹¹⁷ PSSC Rules, at Rule 5.1.1B.

¹¹⁸ *Id.*

¹¹⁹ PSSC Rules, at Rule 5.1.2B.

¹²⁰ *Id.*

requirement” (“CMR”).¹²¹ Participants would be required to maintain sufficient margin assets to collateralize their RMA.¹²² The CMR is defined as the aggregate amount required for a participant to collateralize unsettled settlement obligations with each of its CP Pairs.¹²³ Each participant’s CMR would be calculated by determining a “preliminary computed margin requirement” (“PCMR”);¹²⁴ and adding to the PCMR any fails charges, excessive fails penalties, or both. PSSC would calculate each participant’s CMR at the end of each business day.¹²⁵ The PCMR would be calculated by using the following measures: (i) a dynamic spot price;¹²⁶ (ii)

¹²¹ PSSC Rules, at Rule 5.3B.

¹²² *See* PSSC Rules, at Rule 5.3B.

¹²³ PSSC Rules, at Rule 5.4B. A participant’s unsettled settlement obligation due on settlement date may be net or gross. *See* PSSC Rules, at Rule 4A. The CMR would also include fails charges and excessive fails penalties. PSSC Rules, at Rule 5.4B; *see also* Application, Exhibit J, at 18-19.

¹²⁴ *See* PSSC Rules, at Rule 5.4.1B.

¹²⁵ *See* PSSC Rules, at Rules 5.5B and 5C.

¹²⁶ The dynamic spot price is to equal a three standard deviation move of two-day prices for a relevant security. This would be calculated using the implied volatility of the 30-day at-the-money options for the security. If options prices were unavailable for the security, PSSC would use the actual volatility of the security over the past twenty trading days to calculate the standard deviation of price moves. As described more fully in Rule 5B, the PCMR calculated using a “dynamic spot price,” may use different prices to determine the dynamic spot price in an enhanced netting arrangement. *See* PSSC Rules, at Rule 5.4.1.1B and Rule 5.4.1.2B.

liquidity exposure requirement;¹²⁷ (ii) low-priced securities requirement;¹²⁸ (iii) market capitalization requirement;¹²⁹ and (iv) percentage of outstanding shares requirement.¹³⁰

PSSC would also apply a “credit risk rating” to each participant.¹³¹ The credit risk rating would be based on PSSC’s credit risk rating matrix, which would evaluate the credit risk posed by participants to each other.¹³² PSSC Rules also describe the procedures related to the determination and use of the credit risk rating, including the process by which the Board approves such rating, participant appeal rights, access to potential CP Pair credit risk ratings, requests for increased credit risk rating, annual PAC review of rating factors, and Board review

¹²⁷ See PSSC Rules, at Rule 5.4.1.3B. An unsettled settlement obligation would be subject to liquidity exposure requirement of five percent if the participant’s total unsettled settlement obligation in a security to all of its CP Pairs exceeds the average trading volume in that security over the past thirty trading days. If the unsettled settlement obligation exceeds the average trading volume in a security over the past 30 trading days, by a multiple (e.g., two, three or more times the relevant volume), then the liquidity exposure requirement would increase in corresponding increments. *See id.*

¹²⁸ See PSSC Rules, at Rule 5.4.1.4B. The low-priced security requirement would be determined as follows: a participant with an unsettled settlement obligation to receive a security that has a closing price equal to or less than \$1.00 would be required to post margin equal to 100 percent of the value of the unsettled settlement obligation. A participant with an obligation to deliver a security that has a closing price equal to or less than \$2.50 would be required to post margin equal to 250 percent of the value of the unsettled settlement obligation. *See id.*

¹²⁹ See PSSC Rules, at Rule 5.4.1.5B. The market capitalization requirement would be determined as follows: a participant with an unsettled settlement obligation in a security with a market capitalization equal to or less than \$250,000,000 would be required to post margin equal to 100 percent of the value of the unsettled settlement obligation.

¹³⁰ See PSSC Rules, at Rule 5.4.1.6B. The percentage of outstanding share requirement would be determined as follows: a participant with a total unsettled settlement obligation to all of its CP Pairs to *receive* shares in a security that exceeds five percent of the total shares outstanding for that security would be required to post margin equal to 100 percent of the value of the unsettled settlement obligation. A participant that has a total unsettled settlement obligation to its CP Pairs to *deliver* shares in a security that exceeds five percent of the total shares outstanding for that security would be required to post margin equal to 250 percent of the unsettled settlement obligation. *Id.*

¹³¹ See PSSC Rules, at Rule 2.4.2B. The credit risk rating would be determined by applying to the participant or settlement bank the following factors: (i) the availability of actively traded 5-year credit default swaps applicable to the participant; (ii) credit ratings from any publicly available credit rating service; (iii) capital, assets, earning and liquidity; and (iv) the participant’s creditworthiness and operational capabilities.

¹³² *Id.* PSSC would assign to each participant a credit risk rating based on certain quantitative, and when available, publicly accessible, credit factors. The credit risk ratings assigned would use a five-point credit rating system, with Tier 1 being the strongest and Tier 7 being the weakest.

of participants' credit risk rating. A participant's credit risk rating might be adjusted upward (indicating a poorer creditworthiness) depending upon specified market conditions based on the VIX volatility index and determinations made by the Compliance and Risk Management Committee.¹³³

In the event a participant were to fail to deliver either operating cash or eligible securities on settlement date, the participant would be charged an additional 20 percent of the portion of its CMR that is attributable to the failed settlement obligation.¹³⁴ Fails charges would be collateralized for as long as the fail persists. In the event that the total market value of a participant's fails were to exceed specified percentages of that participant's total unsettled settlement obligation to all of its CP Pairs, the participant would also be subject to an excessive fails charge. Participants would additionally be subject to penalties for excessive fails, escalating those charges based on a formula using the percentage of total market value of the participant's fails as compared to the total unsettled settlement obligations, generating a requirement to post margin assets equal to 50% to 100% of the market value of the total pending settlement obligation.¹³⁵ In cases where the total market value exceeds 50 percent of the total unsettled settlement obligations, the participant would be subject to PSSC Rules governing cessation of services and terminations, which might cause PSSC to cease to act on such participant's behalf.¹³⁶

In addition to the end-of-the-day CMR calculation, PSSC would recalculate the applicable CMR on a continuous basis throughout the course of the next business day, generating

¹³³ See PSSC Rules, at Rule 2.4.2B.

¹³⁴ Application, Exhibit J, at 22–23; see also PSSC Rules, at Rule 5.4B.

¹³⁵ See Application, Exhibit J, at 23; see also PSSC Rules, at Rule 5.4.3B.

¹³⁶ *Id.*

an intraday CMR. The difference between an intraday CMR and the last calculated CMR is referred to as the Intraday Additional CMR. If at any time during the business day, a participant's intraday CMR were to exceed the last calculated CMR requirement by 25 percent and the amount of the Intraday Additional CMR exceeds \$10,000, then the participant would be required to post margin assets equal in value to the Intraday Additional CMR. An intraday CMR that results in this obligation to post such margin equal to the Intraday Additional CMR would be substituted as the CMR for the participant. If the resulting CMR for any participant were to be greater than the initial margin deposit and minimum RMA deposit, then the RMA for such participant would be equal to such CMR.¹³⁷

At least once per day, PSSC would conduct backtesting of its margin methodology using predetermined parameters and assumptions.¹³⁸ At least once per month, or more frequently during periods of high volatility, PSSC would also conduct a sensitivity analysis of its margin methodology and review of its parameters and assumptions for backtesting.¹³⁹ At least annually, PSSC would perform a model validation of its margin methodology.¹⁴⁰

Between trade date and settlement date, PSSC would calculate and collect margin collateral from its participants in the form of cash.¹⁴¹ Each participant would be required to maintain sufficient margin assets to collateralize its RMA, as specified under PSSC Rules.

¹³⁷ See PSSC Rules, at Rule 5.5B.

¹³⁸ See PSSC Rules, at Rule 5.6B. For purposes of its margin methodology rules under Rule 5, the term “backtest” means an ex-post comparison of actual outcomes with expected outcomes derived from PSSC’s use of the margin model.

¹³⁹ See PSSC Rules, at Rule 5.7B.

¹⁴⁰ See PSSC Rules, at Rule 5.8B.

¹⁴¹ See PSSC Rules, at Rule 5A (discussing collateral), Rule 5B (discussing margin methodology), and Rule 5C (discussing margin procedures); see also Application, Exhibit J, at 18–25.

PSSC would determine and communicate to each participant the RMA at least once daily by a cut-off time of 10:00 p.m., or in certain circumstances, not later than 11:59 p.m. on trade date.¹⁴² Each participant would be required to satisfy its RMA by 10:00 a.m. on the following business day, in an amount equal to or greater than the RMA, less any amount of margin assets already credited to the respective participant's Margin Cash Account.¹⁴³ PSSC would determine and communicate to each participant the Intraday Additional CMR charges as soon as practicable.¹⁴⁴ Participants would be required to satisfy any Intraday Additional CMR within two hours of communication by PSSC.¹⁴⁵

Failure to satisfy any margin requirement by the prescribed times would constitute a missed margin call, prompting PSSC to notify each of the CP Pairs of the participant's failure. A participant failing to make any required deposit, including any margin deposit, would establish adequate cause to permit PSSC at its discretion to cease to act for the participant.¹⁴⁶

Under PSSC Rules, participants would be permitted to withdraw margin assets exceeding the RMA upon request. However, PSSC Rules state that PSSC would have the right to reject any withdrawal request based on: (i) the market price or changes in the market price of securities comprising the participant's settlement obligations; (ii) the size of participant's settlement obligations; (iii) the operational capability or financial position of the participant; or (iv) a

¹⁴² PSSC Rules, at Rule 5.2C.

¹⁴³ PSSC Rules, at Rule 5.4C(a).

¹⁴⁴ PSSC Rules, at Rule 5.3C.

¹⁴⁵ PSSC Rules, at Rule 5.4C(b).

¹⁴⁶ PSSC Rules, at Rule 5.5C; *see also* PSSC Rules, at Rule 7 (regarding cessation of services).

determination that such actions is otherwise in the interest of the protection of PSSC, its participants, the markets, or the general public.¹⁴⁷

h) Technology

In its Application, PSSC describes the technology and procedures it would use to ensure security of its systems, including those related to (i) security of its systems; (ii) safeguarding funds and securities within its control; (iii) backup systems for its automated clearing facilities; and (iv) compliance with Regulation SCI.¹⁴⁸ As described more fully in the PSSC Application, PSSC's infrastructure as it relates to its automated clearing functions would be hosted and maintained entirely on a cloud platform.¹⁴⁹ With respect to any PSSC systems hosted on the cloud, separation mechanisms would be in place to prevent automatic entry to PSSC's infrastructure in the event of a systems "intrusion" at the cloud services provider.¹⁵⁰

The PSSC Application states that PSSC intends to negotiate and execute a service agreement with its cloud services provider such that the contractual terms and conditions would enable PSSC to satisfy the requirements of Regulation SCI for the PSS.¹⁵¹ Such terms would include PSSC ensuring that the backup systems provided by the cloud service provider are designed to prevent interruptions in the performance of any function from a technical or other malfunction (including with respect to input or output links to the system and precautions with

¹⁴⁷ See PSSC Rules, at Rule 5.6C.

¹⁴⁸ See Application, Exhibits K, L, M.1, and M.4, respectively.

¹⁴⁹ Application, Exhibit M. PSSC will contract with a cloud service provider as a vendor to support core clearing agency services performed by PSSC, including trade capture, pre-settlement processing, margin, settlement, and custody of security entitlements to securities and cash.

¹⁵⁰ Application, Exhibit L.

¹⁵¹ Application, Exhibit M.4, at 6. PSSC also states that the use of cloud services by registered clearing agencies is a "relatively" new and evolving practice, and as such it, intends to rely on the Commission's Division of Trading and Markets FAQ concerning Regulation SCI. PSSC Rules define PSS as the systems used by PSSC to provide clearance and settlement services to participants. See PSSC Rules, at Rule 1.

respect to malfunctions in any areas external to the system).¹⁵² For example, PSSC states, it would attempt to negotiate terms and conditions requiring that the cloud services rely on separate availability zones only within the U.S. These availability zones would not rely on the same infrastructure components, such as for water and electric power. PSSC states it believes that such terms would be consistent with the requirements in Regulation SCI regarding geographic diversity.¹⁵³

More generally, PSSC would also seek to negotiate contractual terms and conditions that would obligate the cloud services provider to, among other things, establish, maintain, and enforce written policies and procedures reasonably designed to ensure that each cloud service provided to PSSC has a level of capacity, integrity, and resiliency, availability, and security that is sufficient to allow normal operations at all times.¹⁵⁴ In addition, PSSC would seek to establish a right in contractual agreements with the cloud service provider to request relevant documents and perform regulatory inspections or audits of applicable cloud systems and associated physical locations.¹⁵⁵

i) Ramp-Up Period

In the Application, PSSC has proposed steps to “ramp-up its readiness for commencing operations” (the “Ramp-Up Period”).¹⁵⁶ As part of the Ramp-Up Period, PSSC represents that it would not commence operations sooner than ten months from the date of any approval by the Commission of the Application. Once PSSC commenced operations, for a period of not less than

¹⁵² Application, Exhibit M.4, at 6.

¹⁵³ *Id.*

¹⁵⁴ Application, Exhibit M.1 at 7.

¹⁵⁵ *Id.*

¹⁵⁶ *See* Application, Exhibit J, at 36–39.

12 months, PSSC would limit the number of participants to ten and not permit enhanced netting across CP Pairs.¹⁵⁷

PSSC further describes specific steps it will take during the Ramp-Up Period including: (i) implementing “necessary service provider relationships to help support its operations” such as becoming a DTC participant and establishing at least one settling bank relationship; (ii) entering contractual and operational arrangements with its initial participants to include testing of its systems; (iii) developing and implementing any necessary policies and procedures to support operations; (iv) publishing its rulebook on its website; and (v) adding human resources (whether through employee, contractor or vendor relationships) to put in place appropriate knowledge, skills and abilities to support commencing operations. PSSC explains that, during the Ramp-Up Period, as a registered clearing agency, PSSC would be subject to the Commission’s recordkeeping requirements, examinations, and obligations as to self-regulatory organization proposed rule changes.¹⁵⁸ In addition, PSSC states that it will “remain in regular [contact] and coordination” with Commission staff regarding the status of the Ramp-Up Period,¹⁵⁹ consistent with the Commission’s supervisory program for registered clearing agencies.

4. Analysis

As described in the Application, material elements of the clearing agency that affect how PSSC would provide its core services for clearance and settlement remain undeveloped, including the establishment of key relationships that will define the way its technology systems and linkages with other clearing agencies function, the policies and procedures that PSSC uses to

¹⁵⁷ See *id.* at 36–37.

¹⁵⁸ See *id.* at 37–38.

¹⁵⁹ See *id.* at 38.

manage and operate those systems and linkages, and undertakings relating to certain deferred material expenses for capital commitments, human resources, and contractual arrangements, as discussed further in Part IV.

To address this, the Application included a Ramp-Up Period, composed of two phases, during which PSSC intends to undertake multiple actions to address these items and further develop its services.. To that end, PSSC requested temporary registration pursuant to Rule 17Ab2-1(c). Accordingly, the Commission is not, at this time, making a determination as to whether PSSC's Application satisfies the requirements of Section 17A(b)(3)(A) of the Exchange Act.

As discussed further below in Part IV, pursuant to Rule 17Ab2-1(c), the Commission is granting PSSC's request for temporary registration with an exemption from Section 17A(b)(3)(A) of the Exchange Act for a period of 18 months to provide PSSC time to complete the actions described in the Ramp-Up Period.¹⁶⁰

B. Participation Standards

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

Section 17A(b)(3)(B) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, (iv) bank, (v) insurance company, or (vi) other person or class of persons as the Commission, by rule, may from time to time designate as appropriate to the development of a

¹⁶⁰ See 17 CFR 240.17ab2-1(c)(2) (requiring the Commission within nine months of the effective date of the temporary registration of a clearing agency to either make all the determinations required by Section 17A with respect to the registered clearing agency or institute proceedings to determine whether registration should be denied at the expiration of the temporary registration period).

national system or the prompt and accurate clearance and settlement of securities transactions may become a participant in such clearing agency.¹⁶¹

PSSC Rules identify the following persons as those that may be approved for membership provided that they satisfy the applicable qualifications for participation: a broker-dealer registered under the Exchange Act; a bank or trust company organized under the laws of the United States or any state and is a member of the Federal Reserve System; a clearing agency registered under the Exchange Act; an Insurance Company or Insurance Entity;¹⁶² and an investment company registered under Section 8 of the Investment Company Act.¹⁶³ In Exhibit O, PSSC further explains that the proposed qualifications for participation are based substantially on the corresponding, approved requirements of the other registered clearing agencies that serve the equities markets.¹⁶⁴ PSSC states that this approach promotes consistency and coordination of access standards and would allow eligible market participants to gain access to multiple clearing agencies that provide services to the same markets based on the same or similar criteria.¹⁶⁵

Because PSSC Rules specify that each type of person described in Section 17A(b)(3)(B) of the Exchange Act may become a member of PSSC, the Commission has determined that the Application satisfies the requirements of Section 17A(b)(3)(B) of the Exchange Act.

¹⁶¹ 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.

¹⁶² PSSC Rules, at Rules 1.I.2 and 1.I.3.

¹⁶³ PSSC Rules, at Rule 2.3A.

¹⁶⁴ Application, Exhibit O.

¹⁶⁵ If the Commission adopted rules under Section 17A(b)(3)(B)(vi) of the Exchange Act regarding other persons or classes of persons designated as appropriate to the development of the national system for clearance and settlement or the prompt and accurate clearance and settlement of securities transactions, each registered clearing agency, including PSSC, would need to submit a proposed rule change to incorporate such person or class of person into its rules for participation.

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

Section 17A(b)(4)(B) of the Exchange Act states that a registered clearing agency may deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of the clearing agency.¹⁶⁶ Section 17A(b)(4)(B) also provides that, a registered clearing agency may examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency.¹⁶⁷

With respect to the criteria for participation under Section 17A(b)(4)(B) of the Exchange Act, the Application describes how PSSC's participant structure affects its framework of managing risk.¹⁶⁸ Specifically, PSSC has established requirements for applicants' financial resources, operational capacity, creditworthiness, and business experience. With respect to financial resources, the financial responsibility standards for participants vary depending upon the nature of the applicant's business.¹⁶⁹ In addition, PSSC's financial standards require, among other things, that an applicant for participation has sufficient resources to meet all of its anticipated obligations to PSSC and other participants; is in compliance with its regulatory capital requirements; and is not subject to voluntary or involuntary insolvency proceedings.¹⁷⁰

¹⁶⁶ 15 U.S.C. 78q-1(b)(4)(B).

¹⁶⁷ *Id.*

¹⁶⁸ PSSC Rules, at Rule 2.5A.

¹⁶⁹ PSSC Rules, at Rule 2.6A. The rule states that, for example, a broker-dealer applicant shall have at least five hundred thousand dollars (\$500,000) in excess net capital over the greater of the minimum capital requirement imposed pursuant to Rule 15c3-1 under the Exchange Act; such higher minimum capital requirement imposed by its designated examining authority; or one million dollars if the applicant clears for other broker dealers. In the case of a bank, maintain a minimum amount of equity capital in the amount of fifty million dollars (\$50,000,000) or a guarantee of such amount by a parent bank holding company with its own consolidated capital of this amount.

¹⁷⁰ PSSC Rules, at Rule 2.5.1A.(c).

PSSC's operational criteria require prospective applicants to have adequate personnel, books and records, systems and procedures to fulfil its anticipated commitments to and operational requirements of PSSC promptly and accurately as well as to conform to any conditions imposed by PSSC that it reasonably deems necessary for its protection, and an established business history of a minimum of six months, or personnel with sufficient operational background and experience to ensure the ability of the applicant to conduct such business.¹⁷¹ PSSC Rules also require applicants to have an appropriate risk management framework that is commensurate with its risk profile, net capital and business strategy; sufficient to preserve the integrity of PSSC's systems and services; and reasonably designed to protect other participants from risks associated with the use of PSSC's systems and services.¹⁷²

PSSC may also deny admission to any applicant or cease to act for any participant if, among other things, the applicant is subject to any Statutory Disqualification or similar order issued by a federal or state banking authority or other examining authority or regulator; the applicant or its management is responsible for making a misstatement (or omission) of material fact in connection with an application to be a participant or is responsible for fraudulent acts or a violation of federal or state law; or the applicant or its management has been convicted within the past 10 years of the filing of the application (or any time after the filing of the application) of a criminal offense involving such things as the purchase or sale of a security, or bribery, burglary or conspiracy to commit these offenses.¹⁷³

¹⁷¹ PSSC Rules, at Rules 2.5.1A.(d), 2.7A, and 2.8A.

¹⁷² PSSC Rules, at Rule 2.5.1A.(e).

¹⁷³ PSSC Rules, at Rule 2.5.2A.

PSSC participants will be monitored and reviewed for compliance with its qualifications and standards on an ongoing basis.¹⁷⁴ In this regard, PSSC requires its participants to provide it with annual audited financial reports, and, periodically, certain regulatory reports (e.g., the FOCUS reports broker-dealers must file with the Financial Industry Regulatory Authority), among others.¹⁷⁵ PSSC has the authority to conduct due diligence reviews of the financial responsibility and operational capability of any participant,¹⁷⁶ and participants must notify PSSC of any material changes to its organization, operations, or financial condition.¹⁷⁷ Participants must also furnish to PSSC adequate assurances of their financial responsibility and operational capability.¹⁷⁸ In addition, PSSC has the authority to take action with respect to participants that fail to maintain PSSC's participation requirements, including disciplinary sanctions such as fines, censure, or limitations on access to PSSC's services (ceasing to act for the participant).¹⁷⁹

Because PSSC Rules would establish participation requirements that include financial and operational competency standards for participants that clearly denote ongoing compliance obligations and set forth consequences for failing to meet those obligations, the Application demonstrates that PSSC Rules are sufficient to protect PSSC from the risks that can be associated with participants who would not otherwise meet such competency standards.

¹⁷⁴ PSSC Rules, at Rules 2.1B and 2.4B.

¹⁷⁵ PSSC Rules, at Rule 2.2.1B.

¹⁷⁶ PSSC Rules, at Rule 2.4B.

¹⁷⁷ PSSC Rules, at Rule 2.2.2B.

¹⁷⁸ PSSC Rules, at Rule 2.2C.

¹⁷⁹ PSSC Rules, at Rules 7 and 9.

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

C. Fair Representation

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

Section 17A(b)(3)(C) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.¹⁸⁰

2. Summary of Application and Analysis

As described in Part III.A.2, PSSC's Board would be composed of ten directors: three member directors selected by Paxos Holdings; five public directors, initially specified in PSSC's bylaws and thereafter elected annually by the PSSC's Board from among nominees selected by the Board's Governance, Nominating, and Policy Committee; and two participant directors to be nominated by participant representatives serving on the Board's PAC.¹⁸¹ PSSC's Board would not initially include the participant directors; under PSSC's bylaws, within 180 calendar days of PSSC commencing operations and having at least two participants (or a different time that is agreed to by PSSC and its PAC), the participant directors, as selected by the PAC, would be added to the Board.¹⁸²

¹⁸⁰ 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.

¹⁸¹ See Application, Exhibit E.3; see also *supra* Part III.A.2.

¹⁸² See Application, Exhibit E.3; see also *supra* Part III.A.2.

Under Section 17A(b)(3)(C) of the Exchange Act, the Commission considers whether the Application provides fair representation both to shareholders and to participants in the selection of directors and the administration of affairs. In doing so, the Commission undertakes an analysis of the documents in the Application that govern or otherwise affect the selection of directors by the clearing agency and the administration of its affairs. Such documents include, for example, the constitution, articles of incorporation, bylaws, rules, and written policies or procedures. Such analysis considers both qualitative and quantitative factors, including the number of board positions reserved for management or to represent participants, as well as the existence of provisions in governing documents that may impede participation in the selection of directors or the administration of affairs. The Commission also considers the overall organization of the clearing agency, the nature of the products it clears, and the structure of the market it serves, including the nature of existing clearing and settlement arrangements in the market served, the existence of other clearing agencies that would compete to offer services, and the size of the market served by the applicant, to evaluate whether the representation proposed by the applicant is consistent with the requirements of the Exchange Act.¹⁸³

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

With respect to the fair representation of the shareholders in the selection of its directors and administration of its affairs, Paxos Holdings will hold 100% of the membership interests in PSSC and will be represented on the PSSC Board by three member directors. Paxos Holdings will also participate in the selection of PSSC directors. Specifically, Paxos Holdings will be

¹⁸³ Accordingly, the level of participant representation needed to ensure fair representation consistent with the Exchange Act may vary depending on the facts and circumstances, including the market or markets to which the application is directed.

responsible for selecting the three member directors, and the member directors who are selected by Paxos Holdings will also participate in the selection of the five public directors. Regarding selection of public directors, each public director will be elected from among one or more persons nominated by the Governance, Nominating and Policy Committee, which must be composed, at a minimum, of at least one member director, one participant director, and one public director. In addition, no nominee may be nominated by the committee without approval of at least one member director then-serving. Therefore, Paxos Holdings will participate in the selection of eight of the ten directors on the Board. More generally, the Board will be responsible for the operations of the clearing agency and will have oversight of the executives who are managing PSSC, which also allows the shareholder to obtain fair representation in the administration of PSSC's affairs. Taken as a whole, these provisions assure a fair representation of the shareholders of PSSC in the selection of its directors and administration of its affairs.

With respect to fair representation of the participants of PSSC in the selection of its directors and administration of its affairs, 20 percent of the Board will be participant directors. Each participant director in PSSC will be nominated and selected by the participant representatives to the PAC, and each participant will be entitled to representation on the PAC by one representative. Participant directors will also participate in the selection of the five public directors. At least one participant director will be required to serve on the Governance, Nominating and Policy Committee. Therefore, participants will participate in the selection of seven of the ten directors on the Board (*i.e.*, the two participant and five public directors). Additionally, a Board quorum for conducting business will require at least one participant director and one member director, as well as a majority of the directors then serving on the Board. As a result, at no time would the member directors have majority voting power to control

the Board as a voting block. Such ability to influence the selection of directors is an important component of participant representation in the selection of directors and the accompanying ability for participants to participate in the Board-level administration of the affairs of the clearing agency. For these reasons, the governance of PSSC ensures the fair representation of participants in the selection of directors and administration of the affairs of the clearing agency.

In addition, for the reasons discussed III.A.2 above, the Application demonstrates that the PSSC Application is consistent with the requirements related to director independence and board governance provided for in Rule 17Ad-25 under the Exchange Act.¹⁸⁴ The Application also states that PSSC will establish, implement, maintain and enforce written policies and procedures reasonably designed to require the board of directors to solicit, consider and document its consideration of the views of PSSC participants and other relevant stakeholders of PSSC regarding material developments in its risk management and operations on a recurring basis as required by Rule 17Ad-25(j) under the Exchange Act.¹⁸⁵ Such rules, policies and procedures under Rule 17Ad-25 also facilitate participant involvement in the administration of the clearing agency's affairs. Taken as a whole, the provisions of the Application described above assure a fair representation of PSSC participants in the selection of its directors and administration of its affairs.

For the reasons discussed directly above, the Commission determines that the rules of PSSC assure fair representation in the selection of its directors and administration of its affairs consistent with Section 17A(b)(3)(C) of the Exchange Act.

¹⁸⁴ 17 CFR 240.17ad-25; *see also, e.g.*, Application, Exhibit C.1 at 10 (describing application of Rule 17Ad-25 requirements for conflicts of interest to PSSC directors), 11–12 (describing application of requirements for independent directors to PSSC directors and the nominating committee).

¹⁸⁵ 17 CFR 240.17ad-25(j); *see also* Application, Exhibit C.1.

D. Fees

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

Section 17A(b)(3)(D) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.¹⁸⁶ Section 17A(b)(3)(E) of the Exchange Act states that a clearing agency shall not be registered unless the rules of the clearing agency do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.¹⁸⁷

2. Summary of Application and Analysis

PSSC's Schedule of Fees sets forth the fees that PSSC will charge its participants. Participants will elect in writing to be charged on a price per trade or price per share model.¹⁸⁸ A participant may change its selection by providing PSSC reasonable notice in writing. In addition, for the first three months of participation, PSSC will charge each participant a minimum monthly settlement fee of \$5,000. It will also charge a \$2.50 daily fee for failures to settle and charges for failure to provide specified data to comply with ongoing participation requirements.

As described in the Application, both the initial minimum monthly settlement fee and the per trade or per share fees apply to all PSSC participants on an equal basis.¹⁸⁹ Further, PSSC's per trade or per share fees are entirely based on each participant's usage, and as such, provides participants with a choice as to the fee model that best suits their particular business considerations. Moreover, if PSSC fees, dues, and other charges are determined unreasonable for

¹⁸⁶ 15 U.S.C. 78q-1(b)(3)(D).

¹⁸⁷ 15 U.S.C. 78q-1(b)(3)(E).

¹⁸⁸ *See* Application, Exhibit E.13.

¹⁸⁹ *Id.*

any reason by PSSC participants or potential PSSC participants, such participants may choose to use DTC's settlement services instead. In the Commission's view, PSSC's approach provides for equitable allocation of reasonable dues, fees, and other charges amongst its participants. Accordingly, the Commission determines that the Application is consistent with Section 17A(b)(3)(D) of the Exchange Act.

In addition, the Application states that PSSC does not currently fix prices, rates, or fees for services rendered by its participants.¹⁹⁰ The Commission sees no evidence in the Application that PSSC does otherwise, and the Commission therefore determines that the Application is consistent with the requirements of Section 17A(b)(3)(E) of the Exchange Act.

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

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

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

¹⁹⁰ Application, Exhibit Q.

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.¹⁹¹

2. Summary of Application and Analysis

The Commission has adopted multiple rules that are related to Section 17A(b)(3)(F), in that they establish requirements related to financial risk management, default management and loss allocation, and recovery and orderly wind-down. Specifically, these Commission rules implicate the safeguarding of securities and funds and promoting the prompt and accurate clearance and settlement of securities transactions.¹⁹² Part III.A.3 of this order describes how PSSC proposes to conduct trade submission and settlement, how it would address settlement fails, and how it would perform netting and risk management as part of its service offerings. In the context of these services, the Commission below considers how PSSC Rules safeguard securities and funds to effectuate settlement as part of its CSD and settlement system.¹⁹³ The Commission also discusses the comments received as to PSSC's corporate actions and netting processes, as well as its recovery and wind-down plans.

¹⁹¹ With respect to the provisions in Section 17A(b)(3)(F) of the Exchange Act requiring that the rules of the clearing agency are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency and not regulate by virtue of any authority conferred by the Exchange Act matters not related to the purposes of the Exchange Act or the administration of the clearing agency, those topics have been addressed in Parts III.B and III.G, concerning the statutory requirements for, respectively, participant standards of the clearing agency and addressing the clearing agency's burden on competition. With respect to the provisions requiring that the rules foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, those topics have been addressed in Part III.G, concerning the statutory requirements addressing the clearing agency's burden on competition.

¹⁹² See 17 CFR 240.17ad-22(e)(11) (setting forth requirements for CSDs).

¹⁹³ For example, PSSC is subject to certain requirements specific to CSDs, such as those set forth in Rule 17Ad-22(e)(11). See 17 CFR 240.17ad-22(e)(11).

a) Safeguarding of Securities and Funds

Part III.A.3 describes the operations that PSSC would employ, and the PSSC Rules that would govern, settlement through PSSC as a CSD and settlement system. As a registered clearing agency and securities intermediary as defined in Article 8 of the Uniform Commercial Code, PSSC would have control over electronic systems used to record security entitlements that it will create on its books and records for the benefit of its participants. These security entitlements concern either certain securities or U.S. dollar cash. Securities in which PSSC grants participants security entitlements will be required under PSSC Rules to be securities that PSSC accepts as eligible for PSSC's services and to which DTC provides book-entry services. U.S. dollar cash in which PSSC grants participants security entitlements will be required under PSSC Rules to be cash that is held at a bank or trust company that is organized under the laws of the United States or any state, that is supervised by Federal or state regulators, and that has been approved as a Settling Bank by PSSC.

Participants will agree to be bound by the PSSC Rules through the participant agreement between PSSC and each participant that each participant will be required to execute prior to accessing PSSC's services.¹⁹⁴ Under the participant agreement, a participant will agree to abide by PSSC's organizational documents, bylaws, rules and relevant policies, procedures, notices, circulars, interpretations, or other directives and/or decisions adopted by PSSC and to establish such arrangements for conducting business with PSSC as PSSC requires.

With respect to the safeguarding of securities, as provided in PSSC Rule 3, PSSC will be required to be a DTC participant and, as provided in PSSC Rule 2.7A, each participant will also

¹⁹⁴ See Application, Exhibit P (providing the PSSC participant agreement).

be required to be a DTC participant.¹⁹⁵ Eligible securities deposited with DTC for book-entry transfer services are registered in the name of DTC’s nominee, Cede & Co. (“Cede”), which is a New York partnership. When the certificates are registered in the name of Cede, DTC acquires legal title to the securities and, when DTC credits interests in these securities to the securities accounts of its participants, the DTC participants, in turn, acquire a beneficial interest in the securities. PSSC will be one such DTC participant. DTC requires participants to reconcile their activity and positions with DTC upon receipt of applicable activity statements at the end of each day and to immediately report any discrepancies. Participants are also required to reconcile their DTC positions on a daily and month-end basis.¹⁹⁶ In addition, the systems that DTC uses to create security entitlements for its participants are subject to the requirements applicable to it as a registered clearing agency under the Exchange Act, including those requirements set forth in the Commission’s rules for clearing agencies and Regulation SCI.¹⁹⁷ As a DTC participant itself, PSSC will benefit from safeguarding, capacity, resilience, and integrity required of DTC pursuant to those Commission rules in connection with the security entitlements that DTC credits to PSSC’s DTC account. PSSC Participants in turn will benefit from these requirements that apply to DTC and will also apply to PSSC, since PSSC will create security entitlements for its participants based on security entitlements that are credited by DTC to PSSC’s DTC account and because PSSC participants will be required to also be DTC participants.

PSSC Rule 4.4.1 provides that upon receipt of eligible securities from a participant into PSSC’s DTC account, PSSC will create a security entitlement on its books and records that is

¹⁹⁵ See DTC Rules, https://www.dtcc.com/-/media/Files/Downloads/legal/rules/dtc_rules.pdf.

¹⁹⁶ See *id.*

¹⁹⁷ See *supra* note 20 (providing citations to those rules).

credited to the participant account of the relevant participant and that is a representation of the eligible security that is credited by DTC to PSSC's DTC account. PSSC will facilitate withdrawal of eligible securities from the participant account of a participant based on instructions from the participant by removing the security entitlement to the eligible security that is credited to the participant in its participant account on PSSC's books and records and initiating relevant instructions through DTC to remove the eligible security from PSSC's DTC account and to deliver it to a designated DTC account of the participant. To ensure that corporate actions regarding eligible securities are processed by DTC rather than PSSC, each participant will agree, pursuant to PSSC Rule 3A, to provide a standing instruction to PSSC to transfer any eligible security credited to its participant account to the DTC account of that participant before any record date for a corporate action regarding the eligible security.

One commenter, DTCC, stated that PSSC may still encounter corporate actions processing challenges using this approach, explaining that not all corporate actions events are known ex-ante or known with sufficient notice to be handled ex-ante (even as a matter of current normal market practice).¹⁹⁸ DTCC stated that PSSC may be allocated an entitlement (e.g., dividend payment, interest payment, securities payment) instead of the appropriate PSSC participant, should that participant not know ex-ante whether to transfer a given security out of the PSSC environment and back into its own DTC account, and this could require reconciliation and potential claims by the impacted participant. In the PSSC Response Letter, PSSC stated that it looks forward to direct engagement with DTCC on corporate actions processing in connection

¹⁹⁸ DTCC Letter at 2.

with its application to become a DTC participant, and PSSC states that it can address any specific examples through revisions as necessary to its operations-level procedures.¹⁹⁹

With respect to the safeguarding of funds, as provided in PSSC Rules 2.7A and 2.1B, each participant will be required to establish and maintain one or more accounts at a settling bank to facilitate its participation in PSSC. As described in PSSC Rule 4.5, PSSC will also maintain at each settling bank two separate types of omnibus custody accounts for U.S. dollar cash for the benefit of participants. Under PSSC Rules 2.3A(b) and 13.1, a settling bank will be a bank or trust company, including a trust company having limited power, which is organized under the laws of the United States or any state and is a member of the Federal Reserve System or that is supervised and examined by state or Federal authorities having supervision over banks. A settling bank will also be subject to the eligibility, approval and monitoring processes that are described in PSSC Rule 13, including review and approval by PSSC's Compliance and Risk Management Committee of the Board and assignment of a Credit Risk Rating and ongoing monitoring of the settling bank.

Participants will deposit U.S. dollar cash to the Operating Cash Account and the Margin Cash Account through a wire transfer or other funds transfer process acceptable to PSSC.²⁰⁰ Upon receipt of cash from a participant into the Operating Cash Account or Margin Cash Account, as applicable, PSSC will create a security entitlement on its books and records credited to the participant account of the relevant participant that is a representation of the cash in the operating cash account or margin cash account, as applicable. In accordance with instructions to PSSC from a participant, PSSC will facilitate the withdrawal of operating cash or margin cash,

¹⁹⁹ PSSC Letter at 3.

²⁰⁰ PSSC Rules, at Rules 4.5.2 and 4.5.3.

as applicable, from the participant's account by removing the security entitlement to cash credited to the participant's account on the books and records of PSSC and initiating a wire transfer or other funds transfer process acceptable to PSSC from the applicable omnibus account to a designated account of the participant.

b) Prompt and Accurate Clearance and Settlement

As described in detail in Part III.A.3, PSSC Rules address the failure of a participant to deliver cash or securities, the circumstances of a participant default, and PSSC's settlement prioritization. Although PSSC will not operate as a central counterparty, PSSC Rules establish a margin collection system that collateralizes transactions submitted for settlement.

One commenter stated that, if its understanding was correct, it is unclear how trades submitted for settlement on trade date (T) would be handled should there be no express instruction for gross settlement.²⁰¹ The commenter further noted that the Application states netting is expected to occur throughout the day with the creation of an end-of-day bilateral net Settlement Obligation for the participants in the CP Pair for settlement beginning 12 a.m. on each Settlement Day.²⁰² The commenter stated there did not seem to be information in the Application addressing final settlement of trades that are submitted for end-of-day T settlement and that clarification is likely necessary regarding how trades would be processed and the point at which these trades are considered settled with finality.²⁰³ In its response letter, PSSC stated that the result of the interplay between PSSC Rules 4.11, 4.1.A, and 4.3.A and the daily settlement cut-off time is that same-day settling trades accepted before the cut-off time would be incorporated

²⁰¹ DTCC Letter at 3.

²⁰² *Id.*; see also Application, Exhibit J, at 3.

²⁰³ DTCC Letter at 3.

in a participant's bilateral net settlement obligation with its counterparty pair in that particular security.²⁰⁴ Furthermore, PSSC stated that it plans to clarify the cut-off time in its procedures and communications with its participants as part of the Ramp-Up Period.²⁰⁵

Additionally, the same commenter also posed questions regarding PSSC's approach to enhanced netting.²⁰⁶ Specifically, the commenter stated that, without a central counterparty to novate netted obligations, the proposed approach to netting would seem to create a potential need to conduct DVP settlement for more than two linked obligations. In its understanding, the commenter believes that, under Commission rules,²⁰⁷ to achieve DVP for settlement obligations that are calculated through multilateral netting, final settlement of each obligation would be conditioned upon the final settlement of the other obligations (*i.e.*, all linked obligations settle or none do). Based on its understanding of the Application, the commenter states that it is unclear whether such conditioning mechanism is employed (or employed fully), noting that it appears PSSC envisions the ability to partially settle obligations within a netting group for a period of time, should a participant in the group fail to make sufficient cash or securities available by the 3:10 p.m. daily cut off, and these outstanding obligations would then be prioritized in later settlement cycles. The commenter states that, if its understanding is correct, this approach introduces ambiguity in two respects: (1) whether final settlement may proceed as usual for linked obligations within a group that are not affected by the group member(s) who failed to sufficiently prefund while the affected linked obligations are awaiting settlement; and (2) to the extent the affected linked obligations are being processed on later settlement days, it would be

²⁰⁴ PSSC Response Letter at 4.

²⁰⁵ *Id.*

²⁰⁶ DTCC Letter at 3.

²⁰⁷ *Id.* at 2 (citing 17 CFR 240.17ad-22(e)(7), (8), and (12)).

unclear how PSSC can demonstrate that it achieves same-day settlement of payment obligations in the relevant currency. The commenter concludes that further clarification is likely necessary regarding how final settlement occurs on a multilateral basis, particularly as the Application generally reference “bilateral” DVP settlement by CP Pair. In its response, PSSC cites PSSC Rule 4.2A and Section II.H.(ii) of Exhibit J in the Application that provides a description of enhanced netting and detailed examples of its intended function.²⁰⁸ PSSC states that these materials explain that enhanced netting would further net bilateral settlement obligations by and among CP Pairs where such netting would not result in any increased settlement obligation or margin obligation to any of the relevant participants. PSSC also acknowledged that its enhanced netting functionality would not be fully implemented until after completion of the Ramp-Up Period, and, more generally, that it plans to clarify cut-off times in procedures and communications with its participants.²⁰⁹

The Application also includes PSSC’s policies and procedures to manage operational risk. For example, as described in Part III.A.3.h), PSSC has included in its Application policies and procedures that would be consistent with its requirements under Regulation SCI, such as performing periodic assessments of PSSC systems that directly support functionality relating to clearance and settlement, and for processes and programs that, if breached, would be reasonably likely to pose a security threat to such systems. In addition to the required annual SCI Review, PSSC will perform systems health monitoring and vulnerability monitoring and scans on its SCI systems. PSSC also will perform periodic systems capacity testing on the PSS. Because the PSS must be available under extreme market conditions, PSSC will test capacity under extreme

²⁰⁸ PSSC Response Letter at 5.

²⁰⁹ *Id.* at 4.

assumptions that simulate a load far greater than the estimated maximum capacity need.²¹⁰ PSSC also maintains a Business Continuity and Disaster Recovery Plan that will be tested and assessed at least annually.²¹¹

One commenter stated that PSSC may have conflated the concepts of “recovery,” as defined in Commission rules for clearing agencies,²¹² and concepts related to business continuity and disaster recovery (“BC/DR”).²¹³ The commenter states that PSSC’s filing seems to address recovery only from the BC/DR perspective and orderly wind-down planning only with respect to the procedures it would take to wind down its operations but not also the financial resources it would hold to fund such a wind down, and further clarification is likely necessary around PSSC’s recovery and orderly wind-down planning. In response, PSSC stated that it agrees with the commenter’s observation that covered clearing agencies have certain different requirements that address financial risk scenarios and operational risk scenarios; PSSC then stated it is difficult to respond to the conflation comment without a more detailed explanation of the basis for the comment, citing that the commenter did not give any specific example of conflation that may exist in the Application.²¹⁴

²¹⁰ See Application, Exhibit M.4 (summarizing its policies for compliance with Regulation SCI).

²¹¹ See Application, Exhibit M.5 (summarizing the Business Continuity and Disaster Recovery Plan).

²¹² See, e.g., 17 CFR 240.17ad-26(b) (providing a definition of “recovery” to mean “the actions of a covered clearing agency, consistent with its rules, procedures, and other *ex ante* contractual arrangements, to address any uncovered loss, liquidity shortfall, or capital inadequacy, whether arising from participant default or other causes (such as business, operational, or other structural weaknesses), including actions to replenish any depleted prefunded financial resources and liquidity arrangements, as necessary to maintain the covered clearing agency's viability as a going concern and to continue its provision of core services”).

²¹³ DTCC Letter at 3–4.

²¹⁴ PSSC Response Letter at 6.

c) Analysis

As described immediately above and earlier in Section III.A.3.d), PSSC Rules state PSSC would conduct DVP settlement on a bilateral basis of settlement obligations between CP Pairs.²¹⁵ Settlement would occur through the movement of cash and eligible securities on the Paxos Ledger, and each participant would be required to have the securities or cash in its account no later than the relevant cut-off time.²¹⁶ PSSC Rules also provide for the priority of settling outstanding settlement obligations.²¹⁷

However, as previously discussed in Part III.A.4, material elements of the clearing agency that affect how PSSC would provide its core services for clearance and settlement remain undeveloped. In developing and implementing these core services, PSSC may also need to develop additional rules and policies and procedures to ensure that its participants will be able to make use of the services and systems described in its Application. In the PSSC Response Letter, for example, PSSC states that it appreciates comments received regarding its corporate actions processing, and intends to engage with DTCC so that example cases can be addressed in its operations-level procedures during the DTC participant onboard process.²¹⁸ PSSC also states, for example, that it plans during the Ramp-Up Period to clarify cut-off times in its procedures and in communications with participants.²¹⁹ Accordingly, the Commission is not, at this time, making a determination as to whether PSSC's Application satisfies the requirements of Section 17A(b)(3)(F) of the Exchange Act.

²¹⁵ PSSC Rules, at Rule 4A.

²¹⁶ PSSC Rules, at Rule 4.9.

²¹⁷ PSSC Rules, at Rule 6.1.2.

²¹⁸ PSSC Response Letter at 3.

²¹⁹ *Id.* at 4.

As discussed further below in Part IV, pursuant to Rule 17Ab2-1(c), the Commission is granting PSSC's request for temporary registration with an exemption from Section 17A(b)(3)(F) of the Exchange Act for a period of 18 months to provide PSSC time to complete the actions described in the Ramp-Up Period.

F. Participant Discipline

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

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

With respect to discipline and sanctions, PSSC Rules provide that PSSC may discipline a participant for a violation of the rules or any of the participant's agreements with PSSC, or for errors or delays, by imposing sanctions including termination,²²⁰ ceasing to act (including through a summary action of suspension),²²¹ fines (as set forth in PSSC's Fee Schedule), censure, and any other fitting sanction.²²² In addition, in response to a violation of the rules or any of the participant's agreements with PSSC, PSSC may require cash or other deposit by the participant as is necessary or appropriate to protect PSSC and the other participants.²²³

²²⁰ PSSC Rules, at Rules 7.6 and 9.1.

²²¹ PSSC Rules, at Rules 7, 9.1, and 9.4. PSSC may cease to act for a participant at any time with respect to particular transactions or services or with respect to all transactions and services generally. PSSC Rules, at Rule 7.2.

²²² PSSC Rules, at Rule 9.1.

²²³ PSSC Rules, at Rule 9.2.

To monitor for potential violations, PSSC Rules include various requirements regarding the ongoing monitoring of participants, in which participants must comply with the detailed ongoing informational, financial, and operational requirements.²²⁴ A participant's failure to furnish information and/or comply with the requirements of the rule may subject the participant to a restriction on access to PSSC's services, disciplinary proceedings, or PSSC ceasing to act for the participant.²²⁵ PSSC has also delegated to its PAC the responsibility to provide advice and recommendations to management and the Board on matters including participant standards and disciplinary practices regarding participants.²²⁶

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

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

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

²²⁴ PSSC Rules, at Rules 2.1–2.4.

²²⁵ PSSC Rules, at Rule 2.4C.

²²⁶ Application, Exhibit E.10, at 4.

clearing agency of any person with respect to access to services offered by the clearing agency.²²⁷

When a participant application is submitted to PSSC, the PSSC Compliance and Risk Management Committee (“CRM Committee”) will review and approve or disapprove the application.²²⁸ If the CRM Committee is considering denying an application, the CRM Committee will provide the applicant with a written statement describing the reasons why the CRM Committee is considering denying the application and will notify the applicant of its right to request a hearing to determine whether the application should be denied.²²⁹ Even though a hearing can be requested in most circumstances, PSSC Rules clarify that PSSC can deny an application if there are any factors or circumstances about the applicant that may impact the financial or operational ability of the applicant, including the ability to meet settlement obligations to other participants and to meet margin requirements to PSSC or any other adverse factors specified in Rule 2.5.2A.²³⁰

²²⁷ Section 17A(b)(3)(H) of the Exchange Act also states that the rules of the clearing agency must be in accordance with the provisions of Section 17A(b)(5) of the Exchange Act.

²²⁸ PSSC Rules, at Rule 2.9.

²²⁹ PSSC Rules, at Rule 2.10.1A.

²³⁰ PSSC Rules, at Rule 2.10.2A and Rule 2.5.2A. The reasons for denial in Rule 2.5.2A include: (a) the applicant is subject to any Statutory Disqualification as per Section 3(a)(39) of the Exchange Act, or an order of similar effect issued by a federal or state banking authority, or other examining authority or regulator; (b) the applicant is responsible for (i) making a misstatement of a material fact or omitting a material fact to PSSC in connection with its application to become a Participant or (ii) fraudulent acts or a violation of federal or state law; (c) the applicant or its controlling management has been convicted within the last ten years preceding the filing of the application, or at any time thereafter, of: (i) any criminal offense involving the purchase, sale or delivery of any security, or bribery, burglary or conspiracy to commit any offense referred to in this subparagraph (c); (ii) the larceny, theft, robbery, embezzlement, extortion, fraudulent conversion, fraudulent concealment, forgery or misappropriation of funds, securities or other property; (iii) any violation of Sections 1341, 1342 or 1343 of Title 18 of the U.S. Code; or (iv) any other criminal offense involving breach of fiduciary obligation, or arising out of the conduct of business as a broker, dealer, investment company, adviser or underwriter, bank, trust company, fiduciary, insurance company or other financial institution; (d) the applicant or its controlling management has been permanently or temporarily enjoined or prohibited by order, judgment or decree of any court or other

Once an entity is a participant, PSSC Rules require PSSC to send a notice to participants when PSSC proposes to impose any sanction under the PSSC Rules. PSSC will send the participant a notice (“Penalty Notice”) containing a written statement describing the reason for the proposed sanction and notifying the participant that the participant has five business days to respond or PSSC will impose the sanction.²³¹ PSSC Rules explain that the right to contest a decision before it is imposed will not apply to cases in which PSSC summarily suspends or terminates the accounts of a participant pursuant to Section 17A(b)(5)(C) of the Exchange Act.²³²

Once notice has been received, a participant or applicant (“Interested Person”) may request a hearing by filing a written request, within the applicable time period, that details the action or proposed action by PSSC with respect to which the hearing is requested and the name of the Interested Person and its representative who may be contacted with respect to the hearing.²³³ An applicant requesting a hearing due to denial, must submit the written request to PSSC within thirty calendar days of the receipt of the denial notice, and a participant must

governmental authority of competent jurisdiction from acting as a broker, dealer, investment company, advisor or underwriter, bank, trust company, fiduciary, insurance company or other financial institution, or from engaging or in continuing any conduct or practice in connection with any such activity, or in connection with the purchase, sale or delivery of any security, and the enforcement of such injunction or prohibition has not been stayed; or (e) the applicant has been expelled or suspended from or had its participation terminated by an SRO, or has been barred or suspended from being associated with any member of such an SRO.

²³¹ PSSC Rules, at Rules 9.3 and 10.1. PSSC Rule 10.1 specifies the request for a hearing will apply to instances where PSSC: (a) proposes to deny the Applicant’s application to become a participant pursuant to Rule 2A; (b) summarily ceases to act for or terminates the participant pursuant to Rule 7; (c) ceases to act for or terminate the participant pursuant to Rule 7 other than by summary action; (d) proposes to impose a disciplinary sanction pursuant to Rule 9 (other than to cease to act or terminate as described in (b) and (c) above); (e) determines that the issuer’s Eligible Security will cease to be an Eligible Security; or (f) sets a Credit Risk Rating for the participant as described in Rule 5B. PSSC Rules, at Rule 10.1.

²³² PSSC Rules, at Rule 9.4. As set forth in the Application, Section 17A(b)(5)(C) of the Exchange Act permits PSSC summarily to suspend and close the Participant Accounts of a participant that (a) has been and is expelled or suspended from any SRO; (b) is in default of any delivery of funds or securities to PSSC; or (c) is in such financial or operating difficulty that PSSC determines and so notifies the appropriate regulatory agency for such participant that such suspension and closing of Participant Accounts are necessary for the protection of PSSC, its participants, creditors or investors.

²³³ PSSC Rules, at Rules 10.1 and 10.2.1.

submit the written request to PSSC within five business days of PSSC's decision to take any of the following actions: cease to act for or terminate the participant pursuant to its rules, propose to impose a disciplinary sanction, determine that the issuer's Eligible Security will cease to be an Eligible Security, or set a credit risk rating for the participant.²³⁴

Within seven business days after the filing of the written request, or three business days in the case of summary action taken against a participant, the Interested Person will submit to PSSC a written statement detailing: (a) the action or proposed action with respect to which the hearing is requested; (b) the basis for objection to such action; (c) whether the Interested Person intends to attend the hearing; and (d) whether the Interested Person chooses to be represented by counsel at the hearing. If the written statement contests PSSC's determination that the Interested Person has violated a PSSC Rule, the statement must specifically admit or deny each violation and detail the reasons why the rule alleged to have been violated is being contested. Any alleged violation not specifically denied will constitute an admission to that violation. PSSC may reject the statement if it fails to set forth a prima facie basis for contesting the violation. The failure of an Interested Person to submit the written statement within the time period specified above will constitute a waiver by the Interested Person of its right to a hearing. Once a hearing is scheduled, PSSC will notify the Interested Person in writing of the date, place, and hour of the hearing at least five business days prior to the hearing.²³⁵ If the violation an Interested Person disputes is a fine, PSSC will automatically conduct a review of the disputed fine after the Interested Person files a written request and a written statement. PSSC may examine the written statement submitted and/or arrange a meeting with the Interested Person to discuss the disputed fine. If

²³⁴ PSSC Rules, at Rule 10.2.2.

²³⁵ PSSC Rules, at Rule 10.2.3.

PSSC decides to waive the fine, it will notify the Board of the decision. The Board, or an authorized Committee of the Board, may in its reasonable discretion, determine to reinstate any fine waived by PSSC. PSSC will notify the Interested Person of the result of this review process and the Interested Person, if it disputes the outcome, will be entitled to a hearing.²³⁶

Hearings requested for a violation of PSSC Rules in which PSSC is imposing a fine equal to or less than \$2,500 (“Minor Rule Violation”) will be held before a panel, composed of three officers of PSSC. One of the members of the panel will act as chairman and conduct the hearing. At the hearing, an officer of PSSC will present the case against the Interested Person. The Interested Person will have an opportunity to be heard and may be represented by counsel. A record will be kept of the hearing. No later than ten business days after the conclusion of the hearing, the panel will provide the Interested Person with a decision. An Interested Person may request a further hearing for any adverse decision by filing a written request within five business days of receipt of the adverse decision. PSSC will notify the Interested Person of the date, time and place of the hearing at least five business days prior to the hearing. The failure of the Interested Person to submit the written request within the required time period will be deemed an election to waive the right to any further hearing.²³⁷

Any hearing requested in connection with a matter that is not a Minor Rule Violation or an appeal of a Minor Rule Decision will be held before a panel selected from the Board or their designees, with the Chairman of the Board selecting the panel members and panel chairman. The panel will not include any person representing the Interested Person or any person who was responsible for imposing the sanction. At the hearing, the Interested Person will be afforded an

²³⁶ PSSC Rules, at Rule 10.3.

²³⁷ PSSC Rules, at Rule 10.4.1.

opportunity to be heard and may be represented by counsel. A record will be kept of any hearing held. The panel will advise the Interested Person of its decision in writing within ten business days of the conclusion of the hearing. The decision of the panel will be communicated in a notice detailing the reasons upon which the decision is based to the Interested Person (“Notice of Decision”). A copy of the Notice of Decision will also be given to the Chairman of the Board. Decisions of the panel are final, but the Board may in its reasonable discretion modify any sanction or reverse any decision that is adverse to the Interested Person.²³⁸

Any action or proposed action of PSSC in which an Interested Person has the right to request a hearing will be deemed final: (a) when the Interested Person stipulates to the taking of the action by PSSC, at which time PSSC will provide the Interested Person with a notice of decision; (b) upon the expiration of the applicable time period provided in the PSSC Rules for the filing of a written request or a written statement, at which time any such proposed action will become effective and PSSC will provide the Interested Person with a notice of decision; or (c) if a hearing has been held, upon PSSC furnishing the Interested Person with a Notice of Decision.²³⁹

As described above, PSSC has in its rules established procedures to ensure that any participant assessed with a rule violation receives notice of the alleged violation, and is afforded an opportunity to contest the allegations, including by requesting a hearing at which the participant may be represented by counsel. PSSC’s procedures address the disciplining of participants, denial of participation, and prohibitions or limitations imposed by the clearing agency with respect to access to services offered by the clearing agency. The Commission

²³⁸ PSSC Rules, at Rule 10.4.2.

²³⁹ PSSC Rules, at Rule 10.5.

therefore determines that PSSC Rules provide a fair procedure consistent with Section 17A(b)(3)(H) of the Exchange Act.

G. Burden on Competition

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

Section 17A(b)(3)(I) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.²⁴⁰ In addition, Section 17A(a)(2) of the Exchange Act directs the Commission, having due regard for the maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agents, to use its authority under the Exchange Act to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (“National System”) and to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of transactions in securities.²⁴¹

2. Summary of Application and Analysis

As described throughout this order, PSSC proposes to operate a registered clearing agency from within another registered clearing agency and to offer a novel settlement system within that structure. In assessing whether the rules of a clearing agency impose or do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act under Section 17A(b)(3)(I) of the Exchange Act, the Commission considers the impact of the Applicant’s rules on competition among brokers, dealers, clearing agencies, and

²⁴⁰ 15 U.S.C. 78q-1(b)(3)(I).

²⁴¹ 15 U.S.C. 78q-1(a)(2).

transfer agents, and on competition between the Applicant and these entities.²⁴² Where there is a burden on competition, the Commission must determine if that burden is necessary or appropriate consistent with the determination required by Section 17A(b)(3)(I) of the Exchange Act.²⁴³ In so doing, the Commission assesses the benefits that arise from the applicant acting as a registered clearing agency in the National System and the necessity or appropriateness of any burdens on competition that the applicant may impose on the National System.²⁴⁴

The Application states that the technology and data processing techniques represented by its settlement system have the potential to provide unique advancements in the clearance and settlement of securities transactions, including facilitation of more efficient settlement, immediacy of access to settlement proceeds, greater data accuracy and transparency, advanced security and increased levels of availability and operational efficiency.²⁴⁵ Specifically, PSSC identifies benefits such as (i) participants' ability to process settlements on a variety of

²⁴² See, e.g., GSCC Order, 53 FR at 19845.

²⁴³ See *Bradford Nat'l Clearing Corp. v. S.E.C.*, 590 F.2d 1085 (D.C. Cir. 1978) (explaining that Congress intended to give the Commission "exceptionally broad powers" to determine the precise structure of the National System and placed "slightly more emphasis on rapid development and national availability" with respect to the National System than the national market system).

²⁴⁴ In assessing benefits and burdens, the Commission can consider a variety of factors, such as the efficiency and costs of the current National System, emerging operational innovations, emerging technologies, new business models and entrants, and investor protections. For example, Commission staff have previously observed that, to the extent consolidation and heightened regulation of current clearing agencies may serve as barriers to entry in the market for clearance and settlement—further raising the potential for a clearing agency to be the sole provider of a given service—new technologies, such as distributed ledger technology, may present opportunities to mitigate the risk of resulting single points of failure. See, e.g., Staff Report on the Regulation of Clearing Agencies, at 23–24 (Oct. 2020). Distributed ledger technology may have the potential to reduce certain risks in clearance and settlement, and it also can introduce new questions regarding scalability, information security, interoperability, governance, and the application of Commission rules for clearing agencies. See, e.g., The Depository Trust Company, SEC Staff No-Action Letter (Dec. 11, 2025), <https://www.sec.gov/files/tm/no-action/dtc-nal-121125.pdf>; Paxos Trust Company, LLC, SEC Staff No-Action Letter (Oct. 28, 2019), <https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf>; DTCC, Project ION Case Study (May 2020), <https://www.dtcc.com/~media/Files/Downloads/settlementasset-services/user-documentation/Project-ION-Paper-2020.pdf>.

²⁴⁵ See Application, Exhibit J.

timeframes (e.g., T, T+1, or longer), (ii) PSSC providing DVP settlement finality by exchanging cryptographically secure digital representations of eligible securities and cash, which are memorialized in immutable records written to the Paxos Ledger, and after final settlement, settlement proceeds and need not wait until end of day batch processes have been completed; (iii) lower operating costs, which will deliver significant cost efficiencies to participants; (iv) participants having credit exposures to only those other participant counterparties they have approved in advance and having no exposure to PSSC itself; and (v) participants' margin requirements would be highly transparent and, because of PSSC's bilateral settlement model, reduced from current industry levels, thereby freeing up capital for its participants.²⁴⁶

The Commission received two comment letters on the Application, one of which expressed general support for its impact on innovation, the prospective benefits of PSSC's services to the market, and its impact on competition.²⁴⁷ The commenter stated that approval of the Application would represent an important step forward in modernizing U.S. capital markets and enable flexibility in clearing cycles through the advent of sophisticated real-time netting and settlement capabilities, which would present an alternative to clearing through the registered clearing agency subsidiaries of DTCC.²⁴⁸ This competition, the commenter stated, can help lower costs, accelerate the transition toward real-time settlement, and ultimately reduce expenses for retail investors. Additionally, the commenter stated that the presence of a "technologically advanced" clearing agency could incentivize "legacy" providers to modernize and improve

²⁴⁶ Application, Exhibit J, at 3. In this order, the Commission does not intend to predict the degree to which the benefits described by PSSC in its Application may materialize.

²⁴⁷ Robinhood Letter at 1.

²⁴⁸ *Id.*

services, and that timely competition and technological advancement are essential to protecting market integrity and investor interests.

The Commission agrees with the commenter generally that PSSC presents an alternative to other clearing agencies through which market participants clear and settle their transactions, and that competition and technological advancement may facilitate improved efficiencies and lower costs in the National System, which is an essential component to protect market integrity and investor interests. The benefits derived from PSSC operating in the National System, however, need to be balanced against any burdens on competition imposed by PSSC Rules, including the ability to access PSSC's services, the denial or conditioning of participation in the clearing agency, the allocation of fees, dues and charges among its participants, and the impact of PSSC's operations on other non-PSSC member market participants in the National System, including brokers, dealers, and other clearing agencies.

The Application states that all qualifications for participation identified in its Application pertaining to participant eligibility, initial and ongoing participant standards, and assurances of financial responsibility and operational capability are based substantially on the Commission approved rules of other registered clearing agencies.²⁴⁹ PSSC states that this would promote consistency and coordination of access standards within the National System and allow eligible market participants to gain access on substantially similar terms to multiple clearing agencies that provide services within the market for U.S. equities.²⁵⁰ PSSC believes that its approach

²⁴⁹ Application, Exhibit O.

²⁵⁰ *Id.*

reduces compliance burdens that would arise that would arise if different standards applied within the same market.²⁵¹

As discussed in Part III.B, PSSC Rules establish standards for initial and ongoing participation as a PSSC participant. PSSC Rules permit all of the participant categories required by Section 17A(b)(3)(B) of the Exchange Act to be PSSC participants.²⁵² As contemplated by Section 17A(b)(4)(B), PSSC Rules also state that PSSC may deny participation, or condition participation on: (i) legal and regulatory standing; (ii) financial responsibility standards; (iii) general operational capabilities; (iv) adequacy of personnel; (v) risk management framework; (vi) business history evidencing experience and competence. Furthermore, each PSSC participant must comply with ongoing informational, financial and operating requirements set forth in PSSC Rules.²⁵³

PSSC Rules may impact competition among market participants by providing access to its clearing services primarily to those market participants that already have accounts at DTC because PSSC Rule 2.7A states that an applicant for participation in PSSC will be qualified if it is a DTC participant that maintains a DTC Account that is eligible for book-entry services.²⁵⁴ For that reason, market participants that are not already themselves DTC participants may be discouraged from participation in PSSC due to the potential costs associated with establishing and maintaining an account at DTC; alternatively, access to PSSC services may incentivize market participants that do not currently maintain a DTC account to establish participation at

²⁵¹ *Id.*

²⁵² PSSC Rules, at Rule 2.A.

²⁵³ *See* PSSC Rules, at Rules 2, 2.A, 2.B, and 2.C; *see also supra* Part III.B (describing PSSC's initial and ongoing participation standards and compliance with Section 17A(b)(3)(B) of the Exchange Act).

²⁵⁴ *Cf.* Robinhood Letter at 1 (stating that PSSC's capabilities present an alternative to clearing through DTCC and that this competition can help lower costs).

both clearing agencies. In either case, such a burden on competition can be consistent with, the Exchange Act, including Exchange Act Sections 17A(b)(3)(B), 17A(b)(4)(B), and 17A(b)(3)(F) thereof.²⁵⁵ Establishing initial and ongoing participant standards, particularly those related to financial and operational competency, help ensure that PSSC Rules are designed to sufficiently protect PSSC and its participants from risks associated with failure to meet those competencies. Such participation requirements also enable PSSC to manage, mitigate, and where possible, reduce the risk it faces in its capacity as a clearing agency.

As discussed above, one of PSSC's initial participation standards requires that an applicant for PSSC participant status also be a DTC participant that maintains a DTC account eligible for book-entry services.²⁵⁶ According to the Application, the purpose of this dual membership is to facilitate movement of eligible securities to and from PSSC's own DTC account.²⁵⁷ Since the DTC participation requirements also will apply to all market participants seeking to become a participant of PSSC, PSSC Rules may impact competition among market participants to the extent they provide participants in PSSC, DTC, or other clearing agencies a choice among different clearing services. Such choice presents opportunities for innovation in the provision of clearing agency services to market participants.²⁵⁸

While access to these services is necessarily limited to those market participants that are also PSSC and DTC participants, this potential burden on competition would be alleviated to the extent the benefits accruing from the addition of PSSC to the National System extend to the

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

²⁵⁶ PSSC Rules, at Rule 2.7A.

²⁵⁷ *Id.*

²⁵⁸ *See supra* note 244 (describing recent steps both PSSC and DTC have taken regarding their use of innovative clearing agency services).

market generally. For example, market participants can still use PSSC services indirectly as a customer of a PSSC participant, and as such may benefit from efficiencies and cost savings that may arise from use of PSSC. Market participants also may benefit generally from any efficiencies or reduced operational, risk management, and regulatory costs that arise from such attempts at innovation when using the services of DTC indirectly as well.

With regard to the impact of PSSC’s fees, dues, and other charges, as discussed in Section III.D above, on competition, the Application provides its “Schedule of Fees” that include settlement fees, failure to settle charges, and certain fines for failure to provide reports and information.²⁵⁹ PSSC also states that it believes that the fees contained in its service provider contracts are reasonably designed to allow PSSC to satisfy the requirements of Exchange Act Section 17A(b)(3)(D) that its rules must provide for the equitable allocation of reasonable dues, fees, and other charges, which in part requires management of the costs incurred by the clearing agency in service relationships to ensure that the fees charged to participants are reasonable.²⁶⁰ Additionally, PSSC indicates that it does not fix any prices, rates or fees for services rendered by its Participants.²⁶¹ Given that PSSC’s dues, fees, and other charges are assessed on a quantitative or activity-based methodology, and that the Application states that PSSC does not currently fix any prices, rates, or fees for services provided by its participants to their customers, PSSC Rules do not impose a burden on its participants that is not necessary or appropriate.²⁶²

²⁵⁹ See Application, Exhibit E.13.

²⁶⁰ Application, Exhibit C.1, at 6.

²⁶¹ See Application, Exhibit Q.

²⁶² The Application also states that, as of the time of filing, there are no prohibitions or limitations on access to services offered by PSSC participants. See Application, Exhibit R.

Finally, the Commission must assess whether PSSC imposes a competitive burden on other clearing agencies. While PSSC has established its own membership standards and operational and risk management rules, the Application explains how various aspects of PSSC's operations also rely on DTC to perform certain services and functions that would otherwise need to be performed by PSSC. As discussed more fully in Section III.A, B, and F, PSSC relies on, among other things, DTC's participant eligibility determinations, securities eligibility standards and determinations, certain depository functions, corporate action processing, and risk management.²⁶³ For example, PSSC Rules provide that (i) only DTC participants are eligible for admission as a PSSC participant; (ii) only securities eligible for deposit at DTC are eligible for clearance and settlement services at PSSC; and (iii) all corporate actions must be processed using DTC services and systems.²⁶⁴ Therefore while the cost of DTC's services, operations, and regulatory compliance is borne by all DTC participants, those DTC participants that are also PSSC participants benefit the most directly from the potential lower cost of settlement at PSSC.²⁶⁵ The benefit of these lower costs to PSSC participants, however, may be offset by the cost of having to be a participant in two clearing agencies (*i.e.*, DTC and PSSC) and, as such, bear the cost of complying with rules of both clearing agencies.

²⁶³ In addition, the DTCC Letter also describes PSSC as “leverag[ing] participation in DTC to enable [PSSC’s] clearance and settlement operations. *See* DTCC Letter at 2.

²⁶⁴ As explained more fully in Sections III.A and E above, PSSC does not provide corporate action processing. As a result, securities held in PSSC account at DTC on behalf of PSSC participants that are subject to a corporate action will have to be moved out of PSSC’s account at DTC and into the PSSC participant’s account at DTC for processing. Upon completion of the corporate action processing, the PSSC participant would need to instruct DTC to move such securities back to PSSC’s account at DTC for the benefit of the PSSC participant. *See also* DTCC Letter at 2 (providing its views regarding PSSC’s proposed approach to corporate actions based in DTC’s experience with corporate actions processing).

²⁶⁵ PSSC’s approach to settlement may enable PSSC participants to submit to PSSC transactions that carry relatively lower market, credit, or liquidity risk, while continuing to submit to NSSC and/or DTC transactions with comparatively higher market, credit, or liquidity risk.

Clearing agencies, including DTC, retain the ability to adapt services in response to the use of PSSC's clearing agency so long as any related changes are consistent with the Exchange Act.²⁶⁶ For example, pursuant to Section 19(b)(4) and Rule 19b-4 under the Exchange Act, a clearing agency whose participants are also clearing agencies could consider proposed rule changes related to their standards and qualifications for participation or to the risk monitoring or management tools to better address the risks and other effects of having clearing agencies as their participants.²⁶⁷ Registered clearing agencies are also obligated by the Exchange Act and Commission rules to facilitate linked and coordinated systems for clearance and settlement, and to manage the risks that may result from such linkages.²⁶⁸ In the case of PSSC and DTC specifically, DTC and PSSC may use the DTC participant application process to address concerns associated with any PSSC Rules, policies, or procedures that could impact the obligations of DTC, PSSC, or both to comply with their obligations as registered clearing agencies under the Exchange Act or Commission rules. DTC has established a variety of

²⁶⁶ The Commission's announcement of the standards to be used by the Division of Market Regulation (now the Division of Trading and Markets) in connection with the registration of clearing agencies discussed the Division's belief that a clearing agency's registration should qualify it for participation in (or interface with) other registered clearing agencies. The Division recognized, however, that the contra clearing agency has an interest in assuring itself that the participant clearing agency will be able to meet its obligations. For this reason, the Division determined that clearing agencies may require reasonable assurances of another clearing agency's ability to meet its obligations or the obligations of its participants, provided any such requirement is designed and administered in a manner that facilitates the establishment of the National System and that it does not unfairly discriminate among clearing agencies or inappropriately burden competition among them. Standards Release, *supra* note 26, at 419. Each clearing agency would appear to be well situated to propose safeguards necessary and appropriate to minimize its exposure to the particular risks presented by another clearing agency in an interface arrangement. Release No. 34-76514 (Nov. 24, 2015), 80 FR 75401, 75420 (Dec. 1, 2015).

²⁶⁷ Rule 19b-4 and Form 19b-4, Section 4, requires any proposed rule changes filed by an SRO to include to include a statement on the burden on competition. Specifically the filing must (i) state whether a proposed rule change will have an impact on competition and if so, whether it will relieve any burden on or otherwise promote, competition and (ii) specify the particular categories of persons and kinds of business on which any burden will be imposed and the ways in which the proposed rule change will affect them. *See* 17 CFR 240.19b-4.

²⁶⁸ *See* 17 CFR 240.17ad-22(e)(20).

participant membership categories, including for clearing agencies as participants, and as such has rules, policies, and procedures to address specialized circumstances associated with clearing agency participants, and these rules, policies, and procedures would necessarily assist PSSC in its review of PSSC's participant application.²⁶⁹

As set forth in Section 17A(a)(1) of the Exchange Act, new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement, and linking of clearance and settlement facilities and the development of uniform standards and procedures will reduce unnecessary costs and increase the protection of investors.²⁷⁰ Accordingly, the Commission has long supported innovations in technology and operations, and in particular, those that promote risk mitigation, efficiencies and cost reductions in the National System and that further the objectives of Section 17A of the Exchange Act.²⁷¹ Competition often helps to produce such results, and the requirements of the Exchange Act and Commission rules thereunder help facilitate this competition and innovation consistent with the purposes of the Exchange Act, such as facilitating a linked and coordinated National System and the prompt and accurate clearance and settlement of securities transactions.

As noted above, the Application and PSSC Rules pertaining to participant eligibility, initial and ongoing participant requirements, and dues, fees, and other charges meet the standards set forth in Section 17A(b)(3) of the Exchange Act, and as such, to the extent they impose a burden on competition, impose one that is necessary or appropriate in furtherance of the

²⁶⁹ *E.g.*, DTCC Letter at 2 (describing aspects of the process for reviewing and onboarding new DTC participants).

²⁷⁰ 15 U.S.C 78q-1(a)(1).

²⁷¹ *See, e.g.*, Release No. 34-78961 (Sept. 28, 2016), 81 FR 70786, 70867 (Oct. 13, 2016) (explaining that the Commission is scoping the elements of Rules 17Ad-22(d) and (e) to preserve the potential for the continuing development of the National System and maintaining innovation in the operation of registered clearing agencies).

purposes of Section 17A of the Exchange Act. To the extent PSSC's intention to use the services of another clearing agency imposes any burden on competition, such burden could be managed or mitigated by such other clearing agency, such as when considering applications for participation or considering proposed changes to its rules pursuant to the Section 19(b) rule filing process. Because of the potential for new business models and new technologies to promote efficiencies or innovations that contribute to the ongoing development of the National System that can benefit market participants, investors, and the public, the potential burden on competition with respect to other clearing agencies can be necessary and appropriate when such business models and technologies also are consistent with the rules and requirements applied to registered clearing agencies in the Exchange Act and Commission rules thereunder. Accordingly, for the reasons discussed above, and based on the facts and circumstances presented by this Application, the Commission determines, pursuant to Section 17A(b)(3)(I) of the Exchange Act, that the Application, and PSSC's registration as a clearing agency, do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 17A of the Exchange Act.²⁷²

IV. Request for Temporary Registration

PSSC has requested, pursuant to Rule 17Ab2-1(c), that the Commission grant PSSC temporary registration as a clearing agency, which would enable PSSC to undertake the actions described as part of the Ramp-Up Period and in the PSSC Response Letter.²⁷³ For the reasons discussed below, pursuant to Section 17A(b) of the Exchange Act and Rule 17Ab2-1(c)

²⁷² 15 U.S.C. 78q-1(b)(3)(I).

²⁷³ See *supra* notes 33, 218–219, and accompanying text. In addition, as discussed further in Part III.E.2.c), PSSC also will need to demonstrate that its corporate actions processing and netting service fully address the comments received.

thereunder, the Commission is granting PSSC's request for temporary registration as a clearing agency and finds that an exemption from the requirements of Sections 17A(b)(3)(A) and (F) is consistent with the public interest, the protection of investors and the purposes of Section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.²⁷⁴

As discussed throughout this order, the Application includes novel elements. Among others, these include its planned approach to operate as a registered clearing agency as a participant of another clearing agency (*i.e.*, DTC), its use of new technologies to facilitate securities and cash "digitization" on the Paxos Ledger through a cloud services provider, a settlement system oriented around CP Pairs, and the use of both margin collection and an optional netting functionality outside of the typical central counterparty structure. The Commission is mindful that PSSC's Application is one among a number of efforts exploring the ways in which the tokenization of securities may advance the development and adoption of new technologies that can reduce costs and improve efficiency while continuing to promote investor protection.²⁷⁵ If successful, such efforts may unlock new efficiencies consistent with the Congressional findings in Section 17A of the Exchange Act, which state that new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement. PSSC has explained in its description of the Ramp-Up Period the material elements of the work that remains before it can begin operations. Including the detailed description of the Ramp-Up Period alongside the information and documents required to be provided as part of Form CA-1 provides sufficient evidence that PSSC would

²⁷⁴ See 15 U.S.C. 78q-1(b)(1).

²⁷⁵ See *supra* note 244 (describing other efforts, including a tokenization pilot by DTC).

attempt to “faithfully execute[.]” those steps to initiate operations of its clearing agency.²⁷⁶

Consistent with the Congressional findings that begin Section 17A of the Exchange Act, the Commission has, since the enactment of the Securities Act Amendments of 1975, supported the further development of a national system for clearance and settlement that promotes innovation and the development of new technologies, operational systems, and business models that increase efficiency and reduce costs consistent with the purposes of the Exchange Act, including investor protection.²⁷⁷

Nevertheless, in promoting innovation, the Commission also must continue to ensure that any innovative developments within the National System continue to promote the prompt and accurate clearance and settlement of securities transactions and the establishment of linked and coordinated facilities in the National System, while at the same time, maintaining due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and the maintenance of fair competition among brokers, dealers, and clearing agencies. As described in Part III.A.3.i), PSSC has committed to completing the specific actions described in the Ramp-Up Period, during which the Commission can assess PSSC’s progress in completing the development of its core services for clearance and settlement, including any relationships, systems, operations, and policies and procedures necessary to ensure it is able and likely to comply with the requirements set forth in Sections 17A(b)(3)(A) and (F) of the Exchange Act.²⁷⁸ During the Ramp-Up Period, PSSC has included limitations on its activity to ensure that the

²⁷⁶ See *supra* notes 31–32 and accompanying text (quoting *Bd. of Trade of City of Chicago v. S.E.C.*).

²⁷⁷ See, e.g., GSCC Order, 53 FR at 19843.

²⁷⁸ See, e.g., PSSC Response Letter at 2, 4 (explaining that PSSC would engage with DTCC regarding its DTC application, address any examples identified by DTCC for its corporate actions processing in its operations-level procedures, and clarify the cut-off times in its procedures and in communications with PSSC participants during the Ramp-Up Period).

development of its service supports the public interest and the protection of investors: specifically, PSSC states that it would not commence operations sooner than ten months from the date of any approval of its Application while it completes certain actions, and then, for a period of not less than 12 months, it would limit the number of participants to ten and not permit enhanced netting.

In addition, while it undertakes to complete these steps as a registered clearing agency, PSSC must continue to satisfy its obligations under Rule 17Ab2-1 and Form CA-1, including submission of any amendments to its Form CA-1 application as it completes the actions described in the Ramp-Up Period. For example, consistent with the requirements of Rule 17Ab2-1(e), and the instructions on Form CA-1, PSSC is required to amend its Application following any material changes to the descriptions in its Application, including but not limited to any modifications to the descriptions of the Ramp-Up Period.

As a registered clearing agency and self-regulatory organization, PSSC also will be obligated during the Ramp-Up Period to file changes to its rules, policies, and procedures pursuant to Section 19(b) and Rule 19b-4 under the Exchange Act.²⁷⁹ In so doing, its efforts under the Ramp-Up Period will be the subject of public comment and specific processes to ensure that the final development of its clearing agency is consistent with the Exchange Act. PSSC also would be subject to recordkeeping requirements, Commission supervision as a registered clearing agency, and examinations under the Exchange Act. Therefore, the Commission is granting PSSC's request for temporary registration with an exemption from the requirements of Sections 17A(b)(3)(A) and (F) for a period of 18 months.²⁸⁰

²⁷⁹ See *id.*; see also 15 U.S.C. 78s.

²⁸⁰ The requirements of Sections 17A(b)(3)(A) and (F) are discussed above in Part III.A and Part III.E. respectively.

V. Conclusion

For the reasons discussed above, pursuant to Section 17A(b) of the Exchange Act and Rule 17Ab2-1(c) thereunder, the Commission is exempting PSSC from the requirements of Sections 17A(b)(3)(A) and (F) and has determined that PSSC's Application otherwise satisfies the requirements of Section 17A of the Exchange Act and the rules and regulations thereunder. Accordingly, the Commission is granting PSSC's request for temporary registration for a period of 18 months.²⁸¹

IT IS THEREFORE ORDERED, pursuant to Sections 17A and 19(a) of the Exchange Act and Rule 17Ab2-1(c) thereunder, that the application for temporary registration as a clearing agency filed by Paxos Securities Settlement Company, LLC (File No. 600-39) be, and hereby is, APPROVED, and that PSSC is granted exemptions from the requirements in Sections 17A(b)(3)(A) and (F) of the Exchange Act for the reasons described in this order and subject to the terms and other qualifications set forth in the Application, to be effective for not more than 18 months from the date of this order.

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

²⁸¹ 15 U.S.C. 78q-1(b)(2).