

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Part 240**

**[Release No. 34-88616; File No. S7-23-16]**

**RIN 3235-AL48**

**Definition of “Covered Clearing Agency”**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is adopting amendments to the definitions of “covered clearing agency,” “central securities depository services,” and “sensitivity analysis” pursuant to Section 17A of the Securities Exchange Act of 1934 (“Exchange Act”) and the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act”), enacted in Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”).

**DATES:** *Effective date:* July 13, 2020.

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**SUPPLEMENTARY INFORMATION:** The Commission is amending 17 CFR 240.17Ad-22(a)(5) (“Rule 17Ad-22(a)(5)”) to define “covered clearing agency” to mean a registered clearing agency that provides the services of a central counterparty (“CCP”) or central securities depository (“CSD”). The Commission also is amending 17 CFR 240.17Ad-22(a)(3) (“Rule

17Ad-22(a)(3)”) to define “central securities depository” to mean a clearing agency that is a securities depository as described in Section 3(a)(23)(A) of the Exchange Act.<sup>1</sup> In addition, the Commission is amending the definition of “sensitivity analysis” in 17 CFR 240.17Ad-22(a)(16) (“Rule 17Ad-22(a)(16)”) so that the policies and procedures of all covered clearing agencies that are CCPs provide for a sensitivity analysis that considers the most volatile relevant periods, where practical, that have been experienced by the markets served by the covered clearing agency. The Commission is not adopting the proposed definition of “securities settlement system.”

In developing these rule amendments, Commission staff has consulted with the Financial Stability Oversight Council (“FSOC”), Commodity Futures Trading Commission (“CFTC”), and Board of Governors of the Federal Reserve System (“FRB”).<sup>2</sup> The Commission has also considered the relevant international standards as required by Section 805(a)(2)(A) of the Clearing Supervision Act.<sup>3</sup> The relevant international standards for CCPs and CSDs are the *Principles for Financial Market Infrastructures*.<sup>4</sup>

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<sup>1</sup> 15 U.S.C. 78c(a)(23)(A).

<sup>2</sup> See 12 U.S.C. 5472.

<sup>3</sup> 12 U.S.C. 5464(a)(2)(A).

<sup>4</sup> See Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, *Principles for Financial Market Infrastructures* (Apr. 16, 2012) (“PFMI”), <http://www.bis.org/publ/cpss101a.pdf>.

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## **I. Background**

In 2012, the Commission adopted 17 CFR 240.17Ad-22 (“Rule 17Ad-22”) under the Exchange Act to strengthen the substantive regulation of registered clearing agencies and promote their safe and reliable operation.<sup>5</sup> In 2016, the Commission also took an important step in the development of its regulatory framework for registered clearing agencies by adding 17

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<sup>5</sup> See 17 CFR 240.17Ad-22; Release No. 34-68080 (Oct. 22, 2012), 77 FR 66219, 66225–26 (Nov. 2, 2012) (“Clearing Agency Standards adopting release”).

CFR 240.17Ad-22(e) (“Rule 17Ad-22(e)”)<sup>6</sup> which strengthened the existing framework by establishing requirements for registered clearing agencies that meet the definition of a “covered clearing agency.” Rule 17Ad-22(e) includes requirements for covered clearing agencies intended to address the activity and risks that their size, operation, and importance pose to the U.S. securities markets, the risks inherent in the products they clear, and the goals of both the Exchange Act and the Dodd-Frank Act. Of particular note, the requirements in Rule 17Ad-22(e) that address policies and procedures for transparency, governance, financial risk management, and operational risk management help ensure that covered clearing agencies are robust and stable.<sup>7</sup>

As adopted in 2016, Rule 17Ad-22(e) established enhanced requirements for an initial group of registered clearing agencies.<sup>8</sup> The Commission also contemporaneously proposed to amend the definition of “covered clearing agency” and certain other definitions to expand coverage of Rule 17Ad-22(e) to all registered clearing agencies providing the services of a CCP, CSD, or securities settlement system.<sup>9</sup> The Commission received several comments in response to the proposed amendments.<sup>10</sup> In this document, the Commission is adopting amendments to

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<sup>6</sup> Release No. 34-78961 (Sept. 28, 2016), 81 FR 70786, 70902–05 (Oct. 13, 2016) (“CCA Standards adopting release”).

<sup>7</sup> CCA Standards adopting release, supra note 6, at 70793, 70801–10, 70837–38.

<sup>8</sup> Release No. 34-71699 (Mar. 12, 2014), 79 FR 16865 (Mar. 26, 2014), corrected at 79 FR 29507 (May 22, 2014) (“CCA Standards proposing release”).

<sup>9</sup> Release No. 34-78963 (Sept. 28, 2016), 81 FR 70744 (Oct. 13, 2016) (“CCA Definition proposing release”).

<sup>10</sup> Letters from Chris Barnard, dated Dec. 9, 2016 (“Barnard”); Keith Bishop, former California Commissioner of Corporations, dated Oct. 10, 2016 (“Bishop”); Ashley Burrowes, dated Oct. 28, 2016 (“Burrowes”); Carrie Devorah, dated Oct. 18, 2016 (“Devorah”); Andrew Helmin, dated Dec. 9, 2016 (“Helmin”); Karl Muth, dated Nov. 20, 2016 (“Muth”); Suzanne

the definitions of “covered clearing agency” in Rule 17Ad-22(a)(5), “central securities depository services” in Rule 17Ad-22(a)(3), and “sensitivity analysis” in Rule 17Ad-22(a)(16), and the Commission is not adopting the proposed definition of “securities settlement system.” The effect of these amendments is to expand the coverage of Rule 17Ad-22(e) so that all registered clearing agencies providing the services of a CCP or CSD are subject to Rule 17Ad-22(e).

## **II. Amendments to Rule 17Ad-22**

### **A. Rule 17Ad-22(a)(5)**

#### **1. Proposed Amendment and Comment Received**

As discussed in the CCA Definition proposing release, the previous definition of “covered clearing agency” in Rule 17Ad-22(a)(5) stated that “covered clearing agency” means a designated clearing agency or a clearing agency involved in activities with a more complex risk profile for which the Commodity Futures Trading Commission is not the Supervisory Agency as defined in Section 803(8) of the Payment, Clearing and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*).<sup>11</sup> The Commission proposed to amend the definition of “covered clearing

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Shatto, dated Jan. 24, 2017 (“Shatto”). The comment letters are available on the Commission’s website at <https://www.sec.gov/comments/s7-23-16/s72316.htm>.

In addition, two commenters expressed views unrelated to the proposed amendments. For example, one commenter expressed views on the regulation of clearing brokers and another expressed views on counterparty default, margin requirements, failed trades, and the use of shortselling. See Devorah (expressing views regarding J.P. Morgan Chase & Co.’s activity as a clearing broker) and Shatto (expressing views on counterparty default, margin requirements, failed trades, and the use of shortselling). Because these comments are not relevant to the rule amendments adopted in this document, they have not been addressed in Part II.

<sup>11</sup> See CCA Definition proposing release, supra note 9, at 70749.

agency” in Rule 17Ad-22(a)(5) to mean a registered clearing agency that provides the services of a CCP, CSD, or securities settlement system.

The Commission received one comment regarding the proposed amendment to the definition of “covered clearing agency.”<sup>12</sup> The commenter opposed adoption of the proposed amendment, stating that, in contrast to existing Rule 17Ad-22, the proposal fails to meaningfully enhance (i) the precision with which the entities are defined, (ii) the public’s understanding of each category, and (iii) the public’s trust that an entity will then behave in and be regulated in expected ways.<sup>13</sup>

The Commission disagrees that the amendment to the definition of “covered clearing agency” fails to meaningfully enhance the precision with which the entities are defined. The Commission believes that the amended definition is more precise than the previous definition because it is simpler and more accessible, consolidating all of the relevant concepts and factors into one definition in Rule 17Ad-22 and requiring a less subjective analysis to determine whether a clearing agency is subject to the requirements in Rule 17Ad-22(e). The Commission notes that the previous definition of “covered clearing agency” included a number of separate factors that a reader must interpret and apply to determine whether a clearing agency is subject to the enhanced risk management requirements in Rule 17Ad-22(e). Those factors, which are largely but not entirely contained in the previous Rule 17Ad-22(a)(5), include whether a registered clearing agency has been designated as systemically important under Title VIII of the Dodd-Frank Act by FSOC, whether the Commission or the CFTC is the supervisory agency for the

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<sup>12</sup> See Muth. Comments directed specifically to the “securities settlement system” element of the proposed definition are discussed in Part II.D.

<sup>13</sup> See Muth.

registered clearing agency, and whether the registered clearing agency is involved in activities with a more complex risk profile.<sup>14</sup> Readers seeking to understand how to apply and interpret the term “clearing agency involved in activities with a more complex risk profile” must look to 17 CFR 240.17Ad-22(a)(4) and engage in additional analysis, including considering: (i) whether the clearing agency provides central counterparty services for security-based swaps; (ii) whether the Commission has made a determination that a clearing agency is involved in activities with a more complex risk profile at the time of its initial registration (thereby requiring a reader to look to Commission orders approving the registration of a registered clearing agency); and (iii) whether, subsequent to approving a clearing agency’s initial registration, the Commission has made a determination pursuant to another rule, 17 CFR 240.17Ab2-2, that the clearing agency is involved in activities with a more complex risk profile.<sup>15</sup>

In addition, and as first explained in the CCA Definition proposing release, the Commission believes that consideration of these types of factors could result in conflicting outcomes where certain CCPs and CSDs, now or in the future, are excluded from the definition of “covered clearing agency,” resulting in competitive asymmetries between registered clearing agencies that otherwise provide similar clearing agency services.<sup>16</sup> Similarly, the Commission also believes that the amended definition of “covered clearing agency” should enhance public trust that an entity will behave and be regulated in expected ways because the proposed definition eliminates the potential for different regulatory treatment, and therefore different

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<sup>14</sup> See 17 CFR 240.17Ad-22(a)(5).

<sup>15</sup> See 17 CFR 240.17Ad-22(a)(4).

<sup>16</sup> See CCA Definition proposing release, supra note 9, at 70753, 70768.

regulatory behaviors and outcomes, across clearing agencies that provide the same clearing agency services and present similar risks to the U.S. securities markets.

With respect to whether the amended definition of “covered clearing agency” enhances the public’s understanding of each category of covered clearing agency, the Commission also disagrees with the commenter. In contrast to the previous definition, the amendment bases the definition of “covered clearing agency” solely on the particular clearing agency services provided by registered clearing agencies—namely, CCP and CSD services—and therefore enables a clearer understanding and regulatory approach, based on the single and well-understood factor of clearing agency activity, across registered clearing agencies that perform these critical functions.<sup>17</sup> By amending the definition of “covered clearing agency” so that it references only clearing agency functions, the Commission believes that the amendment better aligns the meaning of “covered clearing agency” with the services that such a clearing agency would provide. In addition, these two functions implicate the concentration and management of risk (in particular financial risks, such as credit and liquidity risk) and the potential transmission of systemic risk—activities which, by virtue of their significance to the U.S. financial system generally, and the national system for clearance and settlement in particular, warrant the application of the enhanced requirements in Rule 17Ad-22(e).<sup>18</sup>

Further, since the 2007–2009 financial crisis, the Commission understands that the terms CCP and CSD have become widespread and well-known among market participants,<sup>19</sup> and

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<sup>17</sup> See CCA Standards adopting release, supra note 6, at 70787 (describing clearing agency functions).

<sup>18</sup> See CCA Definition proposing release, supra note 9, at 70750.

<sup>19</sup> See, e.g., Commission, CFTC & FRB, Risk Management Supervision of Designated Clearing Entities, (2011) at 7, <https://www.sec.gov/news/studies/2011/813study.pdf>.

therefore the Commission believes that using terminology consistent with industry practice in the definition of “covered clearing agency” should help enhance the public’s understanding of the relevant clearing agency services that meet the definition of a “covered clearing agency.”

## **2. Final Rule**

The Commission is adopting the proposed definition of “covered clearing agency” but modifying it to remove reference to “securities settlement system,” as further discussed in Part II.D.<sup>20</sup> Accordingly, Rule 17Ad-22(a)(5) as adopted defines “covered clearing agency” to mean a registered clearing agency that provides the services of a CCP or CSD.

### **a. Overview of the Definitions of CCP and CSD**

In light of the amended definition, as of the effective date, all CCPs and CSDs registered with the Commission (that do not already meet the existing definition of “covered clearing agency”) will become subject to examinations for compliance with Rule 17Ad-22(e) and, when filing proposed rule changes under 17 CFR 240.19b-4, will need to consider how rule changes are consistent with Rule 17Ad-22(e).<sup>21</sup> In addition, entities seeking to register as a clearing agency that provide CCP or CSD services, as of the effective date, would also be subject to Rule 17Ad-22(e). The Commission would therefore review any applications on Form CA-1 submitted

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<sup>20</sup> Comments on the proposed definition of “securities settlement system” are discussed in Part II.D.

<sup>21</sup> As a result of the amended definition, as of the effective date, ICE Clear Credit, which provides CCP services for security-based swap transactions, will be a covered clearing agency subject to Rule 17Ad-22(e). The existing CCPs that are already covered clearing agencies and subject to the provisions of Rule 17Ad-22(e) are Banque Centrale De Compensation, Fixed Income Clearing Corporation, ICE Clear Europe, National Securities Clearing Corporation, and The Options Clearing Corporation. The Depository Trust Company is the only CSD registered as a clearing agency in the United States, and it was also already a covered clearing agency subject to Rule 17Ad-22(e).

by such an entity for consistency with Rule 17Ad-22(e). The Commission previously provided guidance on these topics in the CCA Standards adopting release.<sup>22</sup> In the CCA Definition proposing release, the Commission also discussed the important services that CCPs and CSDs provide and how those services support the application of the enhanced requirements in Rule 17Ad-22(e).<sup>23</sup> Below, the Commission is providing further guidance on the types of services that CCPs and CSDs generally provide.

As defined in 17 CFR 240.17Ad-22(a)(2) (“Rule 17Ad-22(a)(2)”), “central counterparty” means a clearing agency that interposes itself between the counterparties to a trade, acting functionally as the buyer to every seller and the seller to every buyer.<sup>24</sup> The definition includes two core concepts: (i) interposing between the counterparties to a trade; and (ii) acting functionally as the buyer to every seller and vice versa. These concepts encompass a wide variety of practices, and differences in the practices of CCPs may reflect the risk characteristics of the instruments that the CCP clears, the characteristics of the participants for which the CCP clears, other external factors, or the design of the CCP’s risk-management framework.<sup>25</sup> For example, the Commission has previously explained that a CCP often assumes a central role in ensuring the performance of open contracts and facilitating the clearance and settlement of trades

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<sup>22</sup> See CCA Standards adopting release, supra note 6, at 70848–49 (in the discussion of effective and compliance dates).

<sup>23</sup> See CCA Definition proposing release, supra note 9, at 70750–52 (discussing the critical functions common among and specific to CCPs and CSDs).

<sup>24</sup> See 17 CFR 240.17Ad-22(a)(2); Clearing Agency Standards adopting release, supra note 5, at 66229.

<sup>25</sup> See PFMI, supra note 4, at 155–57 (describing the variety in CCP structure and operations).

through risk management tools such as: novating and guaranteeing trades, netting, and collecting clearing fund contributions from members.<sup>26</sup> In novating and guaranteeing trades, a CCP assumes the original parties' contractual obligations to each other and assumes their credit risk.<sup>27</sup> In netting, a CCP reduces its overall exposure to its counterparties.<sup>28</sup> By collecting clearing fund contributions, a CCP can maintain sufficient financial resources in the event a member defaults on its obligations to the CCP.<sup>29</sup> In describing these aspects of CCP practices, the Commission stated its belief that a CCP, through its core functions and use of its risk management tools, helps reduce credit, market, and liquidity risk among and to its counterparties.<sup>30</sup> Ultimately, the Commission believes that the essence of a CCP is its role in managing and mitigating credit exposures and liquidity risk.

Like CCPs, CSDs encompass a wide variety of practices. For example, a clearing agency performs CSD services when it (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates; or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or

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<sup>26</sup> Release No. 34-80295 (Mar. 22, 2017), 82 FR 15564, 15566 (Mar. 29, 2017).

<sup>27</sup> See id.

<sup>28</sup> See id.

<sup>29</sup> See id.

<sup>30</sup> See id. at 15567.

lending of securities without physical delivery of securities certificates.<sup>31</sup> As a result, the Commission believes that a range of activities could meet the definition of CSD.

**b. Registered Clearing Agencies that are not Covered Clearing Agencies**

As discussed in the CCA Definition proposing release,<sup>32</sup> registered clearing agencies that are not covered clearing agencies, such as registered clearing agencies that do not provide CCP or CSD services, will continue to be governed by other provisions of Rule 17Ad-22, including 17 CFR 240.17Ad-22(d) (“Rule 17Ad-22(d)”), which contain requirements for various aspects of the payment, clearance, and settlement process.<sup>33</sup>

**B. Rule 17Ad-22(a)(3)**

The Commission proposed to amend the defined term “central securities depository services” in Rule 17Ad-22(a)(3) by deleting the word “services” so that the rule would instead define the term “central securities depository” to mean a clearing agency that is a securities depository as described in Section 3(a)(23)(A) of the Exchange Act. While the Commission proposed to amend the defined term, it did not propose to amend the meaning of the term as set forth in Rule 17Ad-22(a)(3). The purpose of this proposed amendment was to ensure consistency with the use of the defined term “central counterparty” in Rule 17Ad-22(a)(2) in the proposed definition of “covered clearing agency.”

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<sup>31</sup> See 15 U.S.C. 78c(a)(23)(A); 17 CFR 240.17Ad-22(a)(3).

<sup>32</sup> See CCA Definition proposing release, supra note 9, at 70747 n.35.

<sup>33</sup> See 17 CFR 240.17Ad-22(d)(1)–(13).

The Commission received one comment regarding the amendment to the definition of “central securities depository services.”<sup>34</sup> This commenter stated that the proposed definition is “unnecessary surplusage” because Rule 17Ad-22(a)(3) already defines “central securities depository services.”<sup>35</sup> The Commission notes that the purpose of the proposed modification was to conform the defined term “central securities depository” with the defined term “central counterparty” in Rule 17Ad-22(a)(2) by removing the reference to “services” in the term. As previously discussed, the term “central securities depository,” like the term “central counterparty,” is widely known and used among market participants, as CSDs and CCPs are critical financial market utilities.<sup>36</sup> Further, the Commission continues to believe that the amendment improves consistency with the use of “central counterparty” throughout Rule 17Ad-22 and helps make the amended definition of “covered clearing agency” clear. Finally, and for the reasons just given above, the amendment removes a term in Rule 17Ad-22(a)(3) that the Commission believes to be in excess of what is necessary to ensure consistency in expressing a well understood concept both across the Commission’s rules as well as market participants’ application of such terms. For these reasons, the Commission believes that the amendment is appropriate.

For the reasons discussed above, the Commission is adopting the amended definition of “central securities depository” in Rule 17Ad-22(a)(3) as proposed.

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<sup>34</sup> See Bishop.

<sup>35</sup> See id.

<sup>36</sup> See supra note 19 and accompanying text.

### **C. Rule 17Ad-22(a)(16)**

As discussed in the CCA Definition proposing release, a covered clearing agency that provides CCP services must establish, implement, maintain and enforce written policies and procedures reasonably designed to regularly review, test, and verify its risk-based margin system by conducting a sensitivity analysis of its margin model, among other things.<sup>37</sup> The Commission proposed two amendments to the definition of “sensitivity analysis” in Rule 17Ad-22(a)(16). First, in conjunction with the proposed definition of “covered clearing agency,” the Commission proposed to amend the definition of “sensitivity analysis” to remove the reference to “a covered clearing agency involved in activities with a more complex risk profile” from paragraph (a)(16)(ii). Second, in order to improve consistency among the elements within the definition of sensitivity analysis, the Commission proposed to separate the two elements in paragraph (a)(16)(i) into two separate paragraphs and renumber the existing paragraphs accordingly.

Thus, taking these two proposed amendments together, the proposed definition of “sensitivity analysis” would apply to covered clearing agencies that provide CCP services and would mean an analysis that involves analyzing the sensitivity of a model to its assumptions, parameters, and inputs that (i) considers the impact on the model of both moderate and extreme changes in a wide range of inputs, parameters, and assumptions, including correlations of price movements or returns if relevant, which reflect a variety of historical and hypothetical market conditions; (ii) uses actual portfolios and, where applicable, hypothetical portfolios that reflect the characteristics of proprietary positions and customer positions; (iii) considers the most volatile relevant periods, where practical, that have been experienced by the markets served by the clearing agency; and (iv) tests the sensitivity of the model to stressed market conditions,

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<sup>37</sup> See CCA Definition proposing release, supra note 9, at 70754–55.

including the market conditions that may ensue after the default of a member and other extreme but plausible conditions as defined in a covered clearing agency's risk policies.

In response to the proposal, one commenter suggested that the Commission specifically refer to reverse stress testing in the amendments to the rule.<sup>38</sup> The Commission previously addressed this issue in the CCA Standards adopting release. As explained there, Rule 17Ad-22(e) does not preclude a covered clearing agency from performing reverse stress testing as part of its financial risk management; indeed, the Commission indicated that a covered clearing agency generally should consider using reverse stress testing to evaluate the adequacy of financial resources.<sup>39</sup> However, the Commission continues to believe that each covered clearing agency should retain flexibility, subject to its obligations and responsibilities as an SRO under the Exchange Act, to develop its stress testing framework in light of the ever-evolving challenges and risks inherent in the securities markets. Further, the Commission notes that reverse stress testing, which can be a useful tool to evaluate the adequacy of financial resources held by a covered clearing agency, is a distinct concept from sensitivity analysis, which in the context of Rule 17Ad-22(a)(16) concerns how assumptions, parameters, and inputs into a covered clearing agency's margin model react to potential changes in market conditions.

For the reasons discussed above, the Commission is adopting the amended definition of "sensitivity analysis" in Rule 17Ad-22(a)(16) as proposed.

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<sup>38</sup> Barnard.

<sup>39</sup> See CCA Standards adopting release, supra note 6, at 70815.

#### **D. Proposed Definition of “Securities Settlement System”**

In the CCA Definition proposing release, the Commission proposed to define “securities settlement system” to mean a clearing agency that enables securities to be transferred and settled by book entry according to a set of predetermined multilateral rules.<sup>40</sup>

Several commenters raised concerns regarding the proposed definition, stating that it was unclear,<sup>41</sup> ambiguous,<sup>42</sup> and superfluous.<sup>43</sup> Commenters raised these concerns because the term “securities settlement system” does not appear in the Exchange Act,<sup>44</sup> and one commenter did not understand the meaning of “multilateral rules” as used in the definition.<sup>45</sup>

In consideration of these comments, the Commission is not adopting the proposed definition of “securities settlement system.” At this time, no registered clearing agency currently provides only the services of a securities settlement system. Rather, as explained in the CCA Definition proposing release, clearing agencies provide differing clusters of services for their participants, and the Commission has registered several clearing agencies over the years that provide the services of a securities settlement system along with other services.<sup>46</sup> For example, in the past, the Commission has included book-entry transfers among the services provided by

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<sup>40</sup> See CCA Definition proposing release, supra note 9, at 70754.

<sup>41</sup> See Bishop.

<sup>42</sup> See Burrowes.

<sup>43</sup> See id.

<sup>44</sup> See Bishop; Burrowes.

<sup>45</sup> See Helmin.

<sup>46</sup> See CCA Definition proposing release, supra note 9, at 70752 & nn.83–88.

either a CSD or a securities settlement system.<sup>47</sup> As another example, one registered clearing agency currently provides both CSD services and the services of a securities settlement system for the U.S. securities markets.<sup>48</sup> Because the services of a securities settlement system have not been offered as standalone services historically and are not currently,<sup>49</sup> the Commission believes that the amended definition of “covered clearing agency,” as adopted and discussed in Part II.A, covers substantially the same scope of clearing agency activity as the proposed definition.

Thus, in response to the concerns identified by commenters and to eliminate ambiguity, the Commission is not adopting the proposed definition of “securities settlement system.”<sup>50</sup>

### **III. Economic Analysis**

The Commission is sensitive to the economic consequences and effects of the adopted amendments, including their benefits and costs. Under Section 3(f) of the Exchange Act, whenever the Commission engages in rulemaking under the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, it must consider, in addition to the protection of investors, whether the action will promote efficiency,

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<sup>47</sup> See id. at 70748, 70752.

<sup>48</sup> See id.

<sup>49</sup> As described in the CCA Definition proposing release, over the years the Commission has registered a number of entities as clearing agencies that provide a variety of services, including securities settlement services for transactions executed by specialists on an exchange, for mortgage-backed securities transactions, and for cross-border transactions. See id. at 70752.

<sup>50</sup> Because the Commission is not adopting the definition of “securities settlement system,” the numbering for the definition of “sensitivity analysis” will be different than proposed, and the definitions of “stress testing,” “systemically important in multiple jurisdictions,” and “transparent” will retain their original numbering, rather than be renumbered as proposed.

competition, and capital formation.<sup>51</sup> Further, as noted above, Section 17A of the Exchange Act directs the Commission, when using its authority to facilitate the establishment of a national system for clearance and settlement of securities transactions, to have due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents.<sup>52</sup> Section 23(a)(2) of the Exchange Act also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>53</sup>

The Commission is amending the definition of “covered clearing agency” in Rule 17Ad-22(a)(5) by focusing directly on clearing agency functions. Thus the amended definition of “covered clearing agency” covers all clearing agencies that provide the services of a CCP or CSD. The Commission is also adopting a conforming amendment to the definition of “central securities depository services” in Rule 17Ad-22(a)(3), and the Commission is amending the definition of “sensitivity analysis” in Rule 17Ad-22(a)(16). As discussed in Part II, these amendments expand the scope of registered clearing agencies subject to Rule 17Ad-22(e) and encompass one additional registered clearing agency that now meets the definition of a “covered clearing agency” and is subject to the requirements of Rule 17Ad-22(e).

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<sup>51</sup> See 15 U.S.C. 78c(f).

<sup>52</sup> See CCA Definition proposing release, supra note 9, at 70745–46.

<sup>53</sup> See 15 U.S.C. 78w(a)(2).

## A. Economic Background

As the Commission has noted before, registered clearing agencies have become an essential part of the infrastructure of the U.S. securities markets.<sup>54</sup> While central clearing generally benefits the markets in which it is available, clearing agencies can pose substantial risk to the financial system as a whole, due in part to the fact that central clearing concentrates risk in the clearing agency.<sup>55</sup> Disruption to a clearing agency's operations, or failure on the part of a clearing agency to meet its obligations, could therefore serve as a potential source of contagion, resulting in significant costs not only to the clearing agency itself or its members but also to other market participants or the broader U.S. financial system.<sup>56</sup> As a result, proper management

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<sup>54</sup> See CCA Definition proposing release, supra note 9, at 70756; see also CCA Standards adopting release, supra note 6, at 70849.

<sup>55</sup> For example, the default and liquidation of a clearing agency would be costly and disruptive to financial markets. See, e.g., CCA Standards adopting release, supra note 6, at 70866; see also Robert Cox & Robert Steigerwald, *A CCP is a CCP is a CCP*, (Fed. Reserve Bank of Chi. Policy Discussion Paper 2017-01, Apr. 2017), at 13–14, <https://www.chicagofed.org/publications/policy-discussion-papers/2017/pdp-1>. Further, clearing members face risks if losses borne by clearing agencies, including the default of one member, are mutualized across non-defaulting members. See, e.g., CCA Standards adopting release, supra note 6, at 70854–59 (describing the risks clearing agencies face, including, among others, counterparty credit risk, liquidity risk, and operational risk).

<sup>56</sup> See generally Dietrich Domanski, Leonardo Gambacorta, & Cristina Picillo, *Central Clearing: Trends and Current Issues*, BIS Q. REV., Dec. 2015, at 59, [https://www.bis.org/publ/qtrpdf/r\\_qt1512g.pdf](https://www.bis.org/publ/qtrpdf/r_qt1512g.pdf) (describing links between CCP financial risk management and systemic risk); Darrell Duffie, Ada Li, & Theo Lubke, *Policy Perspectives on OTC Derivatives Market Infrastructure*, (Fed. Reserve Bank of N.Y. Staff Report No. 424, Jan. 2010), at 9, [http://www.newyorkfed.org/research/staff\\_reports/sr424.pdf](http://www.newyorkfed.org/research/staff_reports/sr424.pdf) (“If a CCP is successful in clearing a large quantity of derivatives trades, the CCP is itself a systemically important financial institution. The failure of a CCP could suddenly expose many major market participants to losses. Any such failure, moreover, is likely to have been triggered by the failure of one or more large clearing members, and therefore to occur during a period of extreme market fragility.”); Craig Pirrong, *The Inefficiency of Clearing Mandates* (CATO Inst. Policy Analysis No. 655, July 21, 2010), at 11–14, 16–17, 24–26, <http://www.cato.org/pubs/pas/PA665.pdf> (stating, among other things, that “CCPs are concentrated points of potential failure that can create their own systemic risks,” that “[a]t most, creation of CCPs changes the topology of the

of the risks associated with central clearing is necessary to ensure the stability of the U.S. securities markets and the broader U.S. financial system. When a clearing agency provides CCP services, central clearing replaces bilateral counterparty exposures with exposures against the clearing agency. Consequently, a move to central clearing of security-based swaps, holding the volume of security-based swap transactions constant, increases economic exposures against clearing agencies that centrally clear security-based swaps. Increased exposures in turn raise the possibility that these clearing agencies may serve as a transmission mechanism for systemic events.

As the Commission discussed in the CCA Definition proposing release, clearing agencies have incentives to implement a risk management framework that can effectively manage the risks posed by central clearing, but these incentives can also be tempered by pressures to reduce costs and maximize profits that are distinct from goals set forth in governing statutes.<sup>57</sup> In addition, regulatory reforms, including efforts to mandate central clearing for OTC derivatives,

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network of connections among firms, but it does not eliminate these connections,” that clearing may lead speculators and hedgers to take larger positions, that a CCP’s failure to effectively price counterparty risks may lead to moral hazard and adverse selection problems, that the main effect of clearing would be to “redistribute losses consequent to a bankruptcy or run,” and that clearing entities have failed or come close to failing in the past, including in connection with the 1987 market break); Froukelien Wendt, *Central Counterparties: Addressing Their Too Important to Fail Nature* (IMF Working Paper No. 15/21, Jan. 2015), <https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Central-Counterparties-Addressing-their-Too-Important-to-Fail-Nature-42637> (assessing the potential channels for contagion arising from CCP interconnectedness); Manmohan Singh, *Making OTC Derivatives Safe—A Fresh Look* (IMF Working Paper No. 11/66, Mar. 2011), at 5–11, <http://www.imf.org/external/pubs/ft/wp/2011/wp1166.pdf> (addressing factors that could lead central counterparties to be “risk nodes” that may threaten systemic disruption). See also Ben Bernanke, *Clearing and Settlement during the Crash*, 3 REV. FIN. STUD. 133 (1990) for a discussion of the risks affecting clearing and settlement during the October 1987 stock market crash.

<sup>57</sup> See *id.*

can alter incentives to manage risks for both CCPs and clearing members. These factors may cause CCPs to choose risk management policies that do not fully reflect the costs and benefits that accrue to other financial market participants as a result of their decisions, and these choices may have implications for financial stability.

## **B. Baseline**

In order to assess the economic effects of the amendments to Rule 17Ad-22, the Commission uses an economic baseline that considers the current market for clearance and settlement services. As discussed in the CCA Definition proposing release,<sup>58</sup> the Commission believes that the amendment to the definition of “covered clearing agency” will likely result in one additional registered clearing agency, ICE Clear Credit (“ICC”), becoming subject to the requirements in Rule 17Ad-22(e), and may also affect ICE Clear Europe (“ICEU”) because ICEU is a potential substitute provider of CCP services for security-based swaps to ICC’s clearing members, even though the amendment to the definition of “covered clearing agency” does not affect ICEU’s current status as a covered clearing agency.<sup>59</sup> Since publication of the CCA Definition proposing release, the Commission has registered Banque Central de Compensation, which conducts business under the name LCH SA (“LCH SA”), as a clearing agency to provide CCP services for U.S. persons for security-based swaps, including single-name credit default swaps, through its CDSClear business unit. Similar to ICEU, the Commission believes that ICC becoming subject to the requirements in Rule 17Ad-22(e) may

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<sup>58</sup> See id. at 70757.

<sup>59</sup> See infra Part III.C.1.c. Because ICC, ICEU, and LCH SA’s CDSClear overlap in the products they clear, the amendments could potentially cause business to shift among these three clearing agencies.

also affect CDSClear because LCH SA is also a potential substitute provider of CCP services for security-based swaps to ICC’s clearing members, even though the amendment to the definition of “covered clearing agency” does not affect LCH SA’s current status as a covered clearing agency.<sup>60</sup> The Commission’s baseline therefore includes these three entities in the market for clearance and settlement services, the current market practices at these entities, as well as the regulatory framework for these entities, including rules adopted by other regulators to the extent that these rules affect the cost structure, business, and market practices of the above-mentioned entities. Accordingly, Table 1 below provides membership statistics for ICC, ICEU, and LCH SA’s CDSClear as of February 2020.

**Table 1.** Membership statistics for ICE Clear Credit, ICE Clear Europe, and LCH SA’s CDSClear.<sup>61</sup>

		Number
	Clear Credit Members	29
ICE	Clear Europe Members	89
	- Clear Europe Members that clear CDS	30
LCH	SA Members	119
	- CDSClear Members	26

With respect to the regulatory framework and current practices, the Commission discussed each at length in the CCA Definition proposing release.<sup>62</sup> The regulatory framework, which includes

<sup>60</sup> See *supra* note 59 and accompanying text.

<sup>61</sup> Membership statistics are taken from the websites of each of the listed clearing agencies as of February 2020: ICE Clear Credit Participants, <https://www.theice.com/clear-credit/participants>; ICE Clear Europe Membership, <https://www.theice.com/clear-europe/membership>; LCH SA Member Search, <https://www.lch.com/membership/member-search>.

<sup>62</sup> See CCA Definition proposing release, *supra* note 9, at 70757–64.

Section 17A of the Exchange Act, Section 19 of the Exchange Act, Titles VII and VIII of the Dodd-Frank Act, Rule 17Ad-22 under the Exchange Act, and certain regulations adopted by the CFTC, remains substantially unchanged. The current practices of ICC and ICEU also remain substantially unchanged, except that the Commission has approved the following proposed rule changes at ICC and ICEU since publication of the CCA Definition proposing release:

- With respect to risk management, ICC has expanded the scope of credit default swap contracts for which it provides clearing services,<sup>63</sup> revised its risk management framework,<sup>64</sup> revised its liquidity risk management and stress testing frameworks,<sup>65</sup> revised policies and procedures regarding liquidity thresholds,<sup>66</sup> amended policies and procedures for end-of-day price discovery,<sup>67</sup> revised and formalized its model validation

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<sup>63</sup> See, e.g., Release Nos. 34-87297 (Oct. 15, 2019), 84 FR 56270 (Oct. 21, 2019); 34-84130 (Sept. 18, 2018), 83 FR 47665 (Sept. 20, 2018); 34-82853 (Mar. 12, 2018), 83 FR 11570 (Mar. 15, 2018); 34-81646 (Sept. 18, 2017), 82 FR 44477 (Sept. 22, 2017); 34-79892 (Jan. 27, 2017), 82 FR 9086 (Feb. 2, 2017); 34-79197 (Oct. 31, 2016), 81 FR 76987 (Nov. 4, 2016).

<sup>64</sup> See, e.g., Release Nos. 34-87297 (Oct. 15, 2019), 84 FR 56270 (Oct. 21, 2019); 34-84457 (Oct. 19, 2018), 83 FR 53917 (Oct. 25, 2018); 34-83832 (Aug. 13, 2018), 83 FR 41118 (Aug. 17, 2018); 34-82853 (Mar. 12, 2018), 83 FR 11570 (Mar. 15, 2018); 34-79220 (Nov. 2, 2016), 81 FR 78677 (Nov. 8, 2016).

<sup>65</sup> See, e.g., Release Nos. 34-86838 (Aug. 30, 2019), 84 FR 47019 (Sept. 9, 2019); 34-86378 (July 15, 2019), 84 FR 34990 (July 19, 2019); 34-82853 (Mar. 12, 2018), 83 FR 11570 (Mar. 15, 2018); 34-81797 (Oct. 2, 2017), 82 FR 46844 (Oct. 6, 2017); 34-81347 (Aug. 8, 2017), 82 FR 37917 (Aug. 14, 2017).

<sup>66</sup> Release No. 34-80324 (Mar. 28, 2017), 82 FR 16244 (Apr. 3, 2017).

<sup>67</sup> See, e.g., Release Nos. 34-87297 (Oct. 15, 2019), 84 FR 56270 (Oct. 21, 2019); 34-82960 (Mar. 28, 2018), 83 FR 14300 (Apr. 3, 2018); 34-81186 (July 21, 2017), 82 FR 34997 (July 27, 2017); 34-80858 (June 5, 2017), 82 FR 26824 (June 9, 2017).

framework,<sup>68</sup> revised and formalized its back-testing framework,<sup>69</sup> revised and formalized its new initiatives approval policy and procedural framework,<sup>70</sup> and revised and formalized its risk parameter setting and review policy;<sup>71</sup>

- With respect to risk management, ICEU has modified rules relating to its own contribution to CDS default resources,<sup>72</sup> allowed new transaction types,<sup>73</sup> revised policies and procedures concerning end-of-day price discovery,<sup>74</sup> amended its loss-given default framework,<sup>75</sup> amended its collateral and haircut policy,<sup>76</sup> modified its procyclicality framework,<sup>77</sup> amended its stress testing policy,<sup>78</sup> amended its liquidity plan,<sup>79</sup> amended

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<sup>68</sup> See, e.g., Release No. 34-86039 (June 5, 2019), 84 FR 27167 (June 11, 2019); 34-83690 (July 24, 2018), 83 FR 36655 (July 30, 2018).

<sup>69</sup> Release No. 34-85357 (Mar. 19, 2019), 84 FR 11146 (Mar. 25, 2019).

<sup>70</sup> Release No. 34-85105 (Feb. 11, 2019), 84 FR 4570 (Feb. 15, 2019).

<sup>71</sup> Release No. 34-85495 (Apr. 3, 2019), 84 FR 14158 (Apr. 9, 2019).

<sup>72</sup> Release No. 34-81076 (July 5, 2017), 82 FR 32037 (July 11, 2017).

<sup>73</sup> Release No. 34-82890 (Mar. 16, 2018), 83 FR 12630 (Mar. 22, 2018).

<sup>74</sup> See, e.g., Release Nos. 34-84033 (Sept. 5, 2018), 83 FR 46005 (Sept. 11, 2018); 34-83389 (June 6, 2018), 83 FR 27356 (June 12, 2018); 34-81031 (June 27, 2017), 82 FR 30918 (July 3, 2017); 34-80978 (June 20, 2017), 82 FR 28919 (June 26, 2017).

<sup>75</sup> See supra note 73.

<sup>76</sup> Release No. 34-82659 (Feb. 8, 2018), 83 FR 6660 (Feb. 14, 2018).

<sup>77</sup> Release No. 34-82313 (Dec. 13, 2017), 82 FR 60254 (Dec. 19, 2017).

<sup>78</sup> Release Nos. 34-85236 (Mar. 1, 2019), 84 FR 8348 (Mar. 7, 2019); 34-83243 (May 15, 2018), 83 FR 23506 (May 21, 2018).

<sup>79</sup> Release No. 34-84754 (Dec. 7, 2018), 83 FR 64171 (Dec. 13, 2018).

its finance procedures,<sup>80</sup> amended its single name CDS liquidity charge methodology,<sup>81</sup> modified rules relating to its model risk governance framework,<sup>82</sup> revised its back-testing policy,<sup>83</sup> revised its risk policy,<sup>84</sup> and revised its policies relating to liquidity management;<sup>85</sup>

- With respect to client clearing, ICEU modified its rules to permit indirect client clearing arrangements;<sup>86</sup>
- With respect to recovery and wind-down plans, both ICC and ICEU amended their clearing rules relating to default management, recovery, and wind-down;<sup>87</sup>

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<sup>80</sup> Release No. 34-84375 (Oct. 5, 2018), 83 FR 51715 (Oct. 12, 2018).

<sup>81</sup> Release No. 34-85776 (May 3, 2019), 84 FR 20454 (May 9, 2019).

<sup>82</sup> See, e.g., Release No. 34-85128 (Feb. 13, 2019), 84 FR 5137 (Feb. 20, 2019).

<sup>83</sup> See, e.g., Release Nos. 34-87360 (Oct. 18, 2019), 84 FR 57100 (Oct. 24, 2019); 34-85236 (Mar. 1, 2019), 84 FR 8348 (Mar. 7, 2019).

<sup>84</sup> See, e.g., Release Nos. 34-85236 (Mar. 1, 2019), 84 FR 8348 (Mar. 7, 2019); 34-81680 (Sept. 22, 2017), 82 FR 45339 (Sept. 28, 2017).

<sup>85</sup> Release No. 34-86891 (Sept. 6, 2019), 84 FR 48191 (Sept. 12, 2019).

<sup>86</sup> Release No. 34-82422 (Dec. 29, 2017), 83 FR 546 (Jan. 4, 2018).

<sup>87</sup> See, e.g., Release Nos. 34-86783 (Aug 28, 2019), 84 FR 46575 (Sept. 4, 2019); 34-86364 (July 12, 2019), 84 FR 34455 (July 18, 2019); 34-86259 (July 1, 2019), 84 FR 32483 (July 8, 2019); 34-83651 (July 17, 2018), 83 FR 34891 (July 23, 2018); 34-79750 (Jan. 6, 2017), 82 FR 3831 (Jan. 12, 2017).

- With respect to policies and procedures for default management, both ICC and ICEU revised their rules relating to the application of default provisions<sup>88</sup> and revised their auction procedures for a defaulting clearing participant's open CDS positions;<sup>89</sup>
- With respect to recognizing credit events, both ICC and ICEU modified their clearing rules to reflect ISDA's Narrowly Tailored Credit Event supplement;<sup>90</sup>
- With respect to treasury operations, ICC amended its treasury operations policies and procedures;<sup>91</sup>
- With respect to clearing membership policy, ICEU formalized and added requirements for applications for CDS clearing membership;<sup>92</sup> and
- With respect to operational risk, both ICC and ICEU amended their operational risk management frameworks.<sup>93</sup>

In addition, the Commission approved LCH SA's registration as a clearing agency after publication of the CCA Definition proposing release, and since then the Commission has also

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<sup>88</sup> See, e.g., Release Nos. 34-86838 (Aug. 30, 2019), 84 FR 47019 (Sept. 9, 2019); 34-80304 (Mar. 24, 2017), 82 FR 15733 (Mar. 30, 2017).

<sup>89</sup> Release No. 34-87804 (Dec. 19, 2019), 84 FR 71501 (Dec. 27, 2019).

<sup>90</sup> See, e.g., Release Nos. 34-87971 (Jan. 15, 2020), 85 FR 3724 (Jan. 22, 2020); 34-88013 (Jan. 22, 2020), 85 FR 5058 (Jan. 28, 2020).

<sup>91</sup> See, e.g., Release Nos. 34-87859 (Dec. 26, 2019), 85 FR 157 (Jan. 2, 2020); 34-84312 (Sept. 28, 2018), 83 FR 50124 (Oct. 4, 2018); 34-81386 (Aug. 14, 2017), 82 FR 39484 (Aug. 18, 2017).

<sup>92</sup> Release No. 34-86359 (July 11, 2019), 84 FR 34241 (July 17, 2019).

<sup>93</sup> See, e.g., Release Nos. 34-86184 (June 24, 2019), 84 FR 31132 (June 28, 2019); 34-83071 (Apr. 19, 2018), 83 FR 18108 (Apr. 25, 2018).

approved rule changes by LCH SA concerning its policies and procedures for risk management, including with respect to liquidity risk, margin, and default fund management.<sup>94</sup>

The Commission believes that ICEU's rule changes, LCH SA's registration, and LCH SA's subsequent rule changes would not substantially affect the preliminary assessment of most of the economic effects set forth in the CCA Definition proposing release, except to the extent that uniform regulatory requirements among ICEU, LCH SA, and ICC may enable clearing members to shift their business from ICEU or LCH SA to ICC.<sup>95</sup> The Commission also believes that the ICC rule changes may affect the Commission's preliminary assessment of benefits, costs, and the effect on competition, efficiency, and capital formation in two ways, as follows. First, to the extent that changes to ICC's risk management framework result in changes to ICC's clearing fund deposits, margin deposits, and deposits collected in lieu of margin, the updated calculations in Part III.C.1.a below include the effects of such rule changes in estimating the anticipated benefits for clearing members. Second, to the extent that these rule changes improve compliance with any aspect of Rule 17Ad-22(e) or the CFTC's comparable rules, ICC may have lower costs of complying with the amendments to Rule 17Ad-22 than first estimated in 2016.

### **C. Consideration of Benefits, Costs, and the Effect on Competition, Efficiency, and**

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<sup>94</sup> See, e.g., Release Nos. 34-88039 (Jan. 24, 2020), 85 FR 5489 (Jan. 30, 2020); 34-87881 (Jan. 2, 2020), 85 FR 947 (Jan. 8, 2020); 34-86376 (July 15, 2019), 84 FR 34955 (July 19, 2019); 34-83691 (July 24, 2018), 83 FR 36635 (July 30, 2018); 34-82345 (Dec. 18, 2017), 82 FR 60781 (Dec. 22, 2017); 34-81056 (June 30, 2017), 82 FR 31364 (July 6, 2017); 34-80849 (June 2, 2017), 82 FR 26721 (June 8, 2017); 34-80848 (June 2, 2017), 82 FR 26728 (June 8, 2017).

<sup>95</sup> See *infra* Part III.C.1.c.

## **Capital Formation**

As discussed in the CCA Definition proposing release, the aggregate economic effects of the amendments to Rule 17Ad-22 arise from two sources: (i) the amendments' likely effects on existing registered clearing agencies, and (ii) the amendments' likely effects on clearing agencies that may register with the Commission in the future. Thus, the below discussion considers the benefits, costs, and likely effects on efficiency, competition, and capital formation that may arise from these two sources separately.<sup>96</sup> Further, when viewed in isolation, the economic effects related to existing registered clearing agencies are likely to be low in magnitude but, when taken together with the economic effects related to future registrants, could be substantial. This is particularly true because the rules subject future registrants that are CCPs or CSDs to the enhanced requirements in Rule 17Ad-22(e), and these clearing agencies are likely to play critical roles in the U.S. clearance and settlement system.

### **1. Economic Effects Related to Registered Clearing Agencies**

The Commission continues to believe that the addition of ICC as a covered clearing agency will incrementally extend the systemic benefits of risk management first discussed in the CCA Standards adopting release and previously explained in the CCA Definition proposing release. These benefits consist of improved financial stability,<sup>97</sup> a reduction in the ambiguity associated with holding cleared assets in the presence of credit and settlement risk, and a reduction in market fragmentation arising from different requirements across regulatory

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<sup>96</sup> CCA Definition proposing release, supra note 9, at 70764.

<sup>97</sup> See id. at 70765; see also CCA Standards adopting release, supra note 6, at 70867–80.

regimes.<sup>98</sup> The Commission also continues to believe that the extension of these benefits will likely be incremental and will only appear to the extent that the amendments would result in changes to ICC policies and procedures because, as explained in the CCA Definition proposing release, ICC is regulated as a systemically important derivatives clearing organization (“SIDCO”) by the CFTC, and Rule 17Ad-22(e) is consistent with comparable regulatory provisions adopted by the CFTC.<sup>99</sup> The following sections attempt to estimate particular benefits that could accrue to ICC and its members as a result of ICC being more likely to qualify as a Qualified CCP (“QCCP”) under the amended definitions,<sup>100</sup> and then they discuss the costs and the effect on efficiency, competition, and capital formation.

#### **a. Benefits**

As explained in the CCA Definition proposing release, the amendments to Rule 17Ad-22 make it more likely that ICC will qualify as a QCCP for security-based swap transactions in foreign jurisdictions that have adopted the BCBS capital framework’s QCCP definition.<sup>101</sup> In

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<sup>98</sup> See CCA Definition proposing release, supra note 9, at 70765; see also CCA Standards adopting release, supra note 6, at 70861–62.

<sup>99</sup> See CCA Definition proposing release, supra note 9, at 70765.

<sup>100</sup> The BCBS capital framework, as well as the rules adopted by the FRB and Office of the Comptroller of the Currency consistent with that framework, applies lower risk weights to indirect exposures of banks to QCCPs. See BCBS, Capital Requirements for Bank Exposures to Central Counterparties (Dec. 2019), [https://www.bis.org/basel\\_framework/chapter/CRE/54.htm?inforce=20191215&export=pdf](https://www.bis.org/basel_framework/chapter/CRE/54.htm?inforce=20191215&export=pdf) (“BCBS capital framework”); see also Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-Weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule, 76 FR 62017, 62099 (Oct. 11, 2013), at 62103.

<sup>101</sup> See CCA Definition proposing release, supra note 9, at 70765.

particular, ICC's qualification as a QCCP would result in its foreign bank clearing members and foreign bank indirect participants facing lower capital requirements with respect to cleared security-based swap transactions relative to the baseline in which foreign banking regulators do not determine ICC to be a QCCP.<sup>102</sup>

As explained in the CCA Definition proposing release, the BCBS capital framework affects capital requirements for bank exposures to CCPs in two important ways: (i) generally, trade exposures held against a QCCP are assigned a risk weight of two percent rather than risk weights ranging from 20 to 100 percent depending on counterparty credit risk; and (ii) the risk weight applied to default fund contributions to a QCCP are generally lower than those applied to default fund contributions to a non-QCCP.<sup>103</sup> In the proposing release, the Commission used a method permitted under the interim BCBS capital requirements to estimate an upper bound for the benefits to clearing members of lower capital requirements for exposures to QCCPs.<sup>104</sup> Since the CCA Definition proposing release, the BCBS capital framework updated the capital requirements for bank exposures to CCPs. In contrast to the interim approach that was in force until January 1, 2017, the current requirements permit only one method for computing capital requirements for default fund contributions to QCCPs.<sup>105</sup> Under the current requirements, a

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<sup>102</sup> The benefits to bank clearing members are contingent upon regulators in other jurisdictions taking action to recognize ICC's QCCP status following adoption of the amended definition of "covered clearing agency."

<sup>103</sup> See CCA Definition proposing release, *supra* note 9, at 70765.

<sup>104</sup> See BCBS, Capital Requirements for Bank Exposures to Central Counterparties (July 2012), <https://www.bis.org/publ/bcbs227.pdf>.

<sup>105</sup> See CCA Definition proposing release, *supra* note 9, at 70765, for a discussion of the 2014 methods for calculating capital requirements for bank exposures to CCPs; see also *supra* note 104 and accompanying text.

bank clearing member's default fund contribution has a capital requirement that is the greater of either (i) the hypothetical capital requirement of the CCP reflecting all of its counterparty credit risk exposures multiplied by the proportion of the bank clearing member's contribution to the CCP's default fund or (ii) eight percent multiplied by two percent multiplied by the clearing member bank's default fund contribution.<sup>106</sup> Although the change in capital requirements affects the magnitude of benefits that bank clearing members might experience as a result of QCCP status, the Commission continues to expect that bank clearing members subject to the BCBS capital framework may benefit from an improved capital position and lowering funding costs relative to the bank clearing members of non-qualifying CCPs.

As set forth in the CCA Definition proposing release, the Commission has attempted to quantify the benefits of achieving QCCP status using publicly available information with regard to ICC.<sup>107</sup> To estimate the upper bound for the potential benefits accruing to bank clearing members at ICC as a result of its QCCP status, the Commission identified the sample of 15 bank holding companies and foreign equivalents of bank holding companies that own clearing members and, for each, collected information about total assets, risk-weighted assets, net income, and tier-one capital ratio at the holding company level for 2019.<sup>108</sup> The Commission

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<sup>106</sup> See BCBS capital framework, supra note 100; see also supra note 101.

<sup>107</sup> See CCA Definition proposing release, supra note 9, at 70765–66.

<sup>108</sup> The Commission used the set of entities it identified as banks on ICC's member list available at <https://www.theice.com/clear-credit/participants>. For U.S. bank holding companies, 2019 total assets, risk weighted assets, net income, and tier-one capital ratios were collected from Y-9C reports from the National Information Center, available at <https://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx>. For the foreign equivalent of bank holding companies, Commission staff obtained corresponding data from financial statements and supplementary financial materials posted to company websites. Where necessary, values were converted back to U.S. dollars at September 30, 2019 or December 31, 2019 (depending on the

then allocated trade exposures and default fund exposures across the sample of bank clearing members based on the level of risk-weighted assets.<sup>109</sup> The Commission measured the impact on risk-weighted assets for foreign bank clearing members under two different capital treatment regimes. In the first regime, ICC does not obtain QCCP status, and bank clearing members are subject to a 100 percent risk weight for trade exposures and a 1250 percent risk weight for default fund exposures. In the second regime, ICC obtains QCCP status, and bank clearing members can apply a two percent risk weight to trade exposures and the greater of either (i) ICC’s hypothetical capital requirement multiplied by the proportion of the bank clearing member’s contribution to the CCP’s default fund, or (ii) 0.16 percent of the bank clearing member’s default fund contribution.<sup>110</sup> If ICC is determined to be a QCCP, then the increase in risk-weighted assets will be smaller in magnitude, implying a smaller adjustment at lower cost. Using data through December 2019, the Commission now estimates that the benefits of lower capital requirements against exposures to QCCPs as a result of the amendments to Rule 17Ad-22 have an upper bound of \$17.8 million per year (up from the estimate of \$12.9 million provided in

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most recently reported quarterly financial results) exchange rates obtained from the Federal Reserve at <http://www.federalreserve.gov/releases/h10/hist/>.

<sup>109</sup> For example, one bank in the sample, with 8.52 percent of total risk-weighted assets, was assigned 8.52 percent of the total trade and default fund exposures while another bank in the sample, with 3.01 percent of total risk weighted assets, was assigned 3.01 percent of these exposures. Because trade exposures of ICC members against ICC are nonpublic, the Commission used the balance of ICC margin deposits in house accounts held by ICC, \$11.1 billion, as a proxy for trade exposures. ICC’s clearing participant guaranty fund deposits as of September 30, 2019 were valued at \$2.28 billion. See ICC 2019 Q3 Quantitative Disclosure, <https://www.theice.com/clear-credit/regulation#quantitative-disclosures>.

<sup>110</sup> See BCBS capital framework, *supra* note 100. ICC’s hypothetical capital requirement (“KCCP”) as of September 30, 2019 was \$126.38 million. See *supra* note 109 and accompanying text (discussing ICC’s guaranty fund deposits).

the CCA Definition proposing release, which was based on data through August 2016), or approximately 0.01 percent of the total net income reported by the bank holding companies and foreign equivalent of bank holding companies that own ICC clearing members in 2019.<sup>111</sup>

As previously explained in the CCA Definition proposing release, the Commission's analysis here is limited in several respects and relies on several assumptions about the nature of trade exposures to ICC,<sup>112</sup> as discussed further below. First, the Commission is using the balance of ICC's margin account and default fund as proxies for trade exposures and guaranty fund deposits, respectively. These likely include deposits both by bank clearing members, who would directly experience lower capital requirements under the BCBS capital framework, and non-bank subsidiaries of bank holding companies and foreign equivalents of bank holding companies, who would experience effects through the lower capital requirements of their parent bank holding companies. Furthermore, the guaranty fund deposits may include deposits by non-bank client clearing participants. For the purposes of this analysis, the Commission continues to assume, to establish an upper bound for the benefits to market participants that are associated with QCCP status for ICC under the adopted rules, that ICC's guaranty fund accounts are attributable only to bank clearing members. Additionally, the Commission continues to assume an extreme case where, in the absence of QCCP status, trade exposures against a CCP would be

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<sup>111</sup> The Commission quantified the benefits related to ICC's attaining QCCP status for ICC's bank clearing members and indirect participants with respect to all reported exposures. Over the period of March 2009 through December 2019, the gross notional value of security-based swap transactions cleared by ICE Clear Credit comprised 9.6 percent of the total value of all CDS transactions cleared (see <https://www.theice.com/clear-credit>). Based on this information, the Commission arrived at the benefits to ICC's bank clearing members and bank indirect participants from ICC's attaining QCCP status with respect to security-based swap transactions by multiplying the total benefits by 0.096.

<sup>112</sup> See CCA Definition proposing release, *supra* note 9, at 70766–77.

assigned a 100 percent risk weight, causing the largest possible shock to risk-weighted assets for affected banks.

Second, lower capital requirements on exposures to ICC would produce effects in the real economy only under certain conditions. For example, agency problems, taxes, or other capital market imperfections could result in banks targeting a particular capital structure. Additionally, the BCBS capital framework must constrain bank clearing members such that these banks cannot either use capital to invest in assets whose returns exceed the banks' cost of capital or return capital to shareholders because these actions would decrease their capital ratios below regulatory minimums. Using publicly available data, however, it remains unfeasible to determine to what extent the finalized BCBS capital requirements will constrain bank clearing members. Instead, the Commission continues to assume that all bank clearing members of ICC act as if they are at their minimum allowed tier-one capital ratios before accounting for exposures to CCPs.<sup>113</sup>

Third, the Commission continues to assume that banks choose to adjust to new capital requirements by deleveraging. In particular, the Commission has assumed that banks would respond by reducing risk-weighted assets equally across all risk classes until they reach the minimum tier-one capital ratio under the BCBS capital framework.<sup>114</sup> The Commission

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<sup>113</sup> The Commission notes that, at present, no bank in its sample of bank clearing members of ICC has only the minimum amount of capital required by the BCBS capital framework. For U.S. bank holding companies, tier-one capital ratios were collected from Y-9C reports from the National Information Center, available at <https://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx>. For the foreign equivalent of bank holding companies, Commission staff obtained corresponding data from financial statements and supplementary financial materials posted to company websites. The Commission used data from 2019 for its sample of clearing members. This sample's minimum tier-one capital ratio is 12.2 percent, and the minimum amount by which a clearing member exceeds its tier-one capital requirement is two percent.

<sup>114</sup> Each bank, bank holding company, and foreign equivalent of a bank holding company faces the same six percent base tier-one capital ratio requirement and 2.5 percent capital

continues to measure the ongoing costs to each foreign bank clearing member by multiplying the implied change in total assets by each bank's return on assets, using up to 12 years of annual financial statement data.<sup>115</sup>

Fourth, the BCBS capital framework yields additional benefits for QCCPs that the Commission remains unable to quantify due to a lack of data concerning client clearing arrangements by banks. For client exposures to clearing members, the BCBS capital framework allows participants to reflect the shorter close-out period of cleared transactions in their capitalized exposures. The BCBS capital framework's treatment of exposures to CCPs also applies to client exposures to CCPs through clearing members. This may increase the likelihood that bank clients of bank clearing members subject to the BCBS capital framework share some of the benefits of QCCP status.

Fifth, the BCBS capital framework may impact competition and concentration. For example, while the amendments to Rule 17Ad-22 may extend lower capital requirements to certain bank clearing members, the costs of overall compliance with Rule 17Ad-22 may be borne by all clearing members, regardless of whether or not they are supervised as banks. A potential consequence of this allocation of costs and benefits may be a "crowding out" of non-bank members of QCCPs, including any such subsidiaries of bank holding companies, who may not experience any or all of the benefits with respect to the BCBS capital framework. This may result in an unintended consequence of an increased concentration of clearing activity among

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conservation buffer. Additionally, each bank holding company has a buffer for being a globally or domestically systemically important bank, ranging from one percent to 3.5 percent. Lastly, some jurisdictions have instituted countercyclical capital buffers.

<sup>115</sup> This data has been taken from Compustat. Due to data limitations, for certain banks a shorter window was used for this calculation. The minimum sample window was nine years.

ICC's bank clearing members. This increased concentration could mean that each of the remaining clearing members becomes more important from the standpoint of systemic risk transmission since, for example, clearing agencies would have fewer non-defaulting members to take on a defaulting member's portfolio, and clearing agencies that rely on clearing members to participate in default auctions would hold auctions with fewer participants.

Sixth, the Commission continues to believe that the benefits of ICC attaining QCCP status may depend on whether foreign bank clearing members of ICC are currently able to shift their clearing business from ICC to alternative clearing agencies that serve similar markets. In this regard, the Commission notes that ICC has several overlapping members with ICEU and LCH SA's CDSClear. ICEU and CDSClear also clear many of the same contracts that ICC does.<sup>116</sup> ICEU clears all of the European corporate single name CDS and Western European sovereign single name CDS. Additionally, compared to ICC's 250 North American corporate single name reference entities, LCH SA clears contracts on 153 North American entities, with significant overlap. Thus, in a situation where ICEU and LCH SA are QCCPs and ICC is not, common foreign bank clearing members of the three agencies may obtain many of the same benefits of ICC having QCCP status by moving their clearing business to either ICEU or LCH SA's CDSClear. However, under such a scenario, the full range of benefits stemming from ICC having QCCP status would not be fully realized because: (i) some clearing members of ICC are not clearing members of either ICEU or LCH SA's CDSClear; (ii) some participants that have a

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<sup>116</sup> ICEU clears all of the European corporate security-based swaps and Western European sovereign security-based swaps that ICC does. CDSClear only clears corporate security-based swaps that reference constituents of the index products it accepts. The 153 unique North American reference entities have a substantial overlap with the North American corporate security-based swaps that ICC clears. The Commission used the description of ICEU cleared contracts available at <https://www.theice.com/clear-europe/cds> and CDSClear cleared contracts available at <https://www.lch.com/services/cdsclear/what-we-clear>.

client clearing agreement with ICC may not have a client clearing agreement with ICEU; and  
(iii) ICC clears contracts that neither ICEU or LCH SA's CDS Clear does. Thus, even common bank members may not be able to move their entire clearing business to another CCP.

#### **b. Costs**

As previously discussed, ICC is a SIDCO regulated by the CFTC under a regime that is consistent and comparable with Rule 17Ad-22(e). In light of the similarity among the two regulatory frameworks, the Commission continues to believe that the economic costs ICC will bear as a result of the amendments to Rule 17Ad-22 will be related to the establishment, implementation, and maintenance of certain policies and procedures under Rule 17Ad-22(e). The Commission now estimates that these costs will at most include one-time costs of

approximately \$752,673<sup>117</sup> and annual costs of approximately \$158,594.<sup>118</sup> As noted above in Part III.B, to the extent that rule changes implemented by ICC since 2016 facilitate compliance with Rule 17Ad-22(e), the actual cost to ICC may be lower.

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<sup>117</sup> Calculated as ((Assistant General Counsel for 440 hours at \$478 per hour) + (Chief Compliance Officer for 146 hours at \$544 per hour) + (Chief Financial Officer for 50 hours at \$1,111 per hour) + (Compliance Attorney for 377 hours at \$374 per hour) + (Computer Operations Department Manager for 344 hours at \$452 per hour) + (Financial Analyst for 70 hours at \$281 per hour) + (Senior Business Analyst for 85 hours at \$281 per hour) + (Senior Programmer for 75 hours at \$340 dollars per hour) + (Senior Risk Management Specialist for 114 hours at \$367 per hour)) = \$752,673. These dollar amounts have been updated since the CCA Definition proposing release to account for inflation since 2016.

To monetize these costs and those set forth below, Commission staff used data from two SIFMA publications, Management and Professional Earnings in the Security Industry—2013, and Office Salaries in the Securities Industry—2013, modified to account for an 1800-hour work year and multiplied by 5.35 (professionals) or 2.93 (office) to account for bonuses, firm size, employee benefits and overhead. Inflation adjustments use data published by the Bureau of Labor Statistics.

Commission staff separately estimated an hourly rate for a chief financial officer, using the website [www.salary.com](http://www.salary.com), which reports median salaries of \$378,564, and a Grant Thornton LLP 2019 survey, which estimates that Russell 2000 financial services chief financial officers receive a median annual salary of \$368,815. Using an approximate midpoint of these two estimates of \$373,690 per year, and dividing by an 1800-hour work year and multiplying by the 5.35 factor, which normally is used to include benefits but here is used as an approximation to offset the fact that New York salaries are typically higher than the rest of the country, the result is \$1,111 per hour.

<sup>118</sup> Calculated as ((Administrative Assistant for 20 hours at \$82 per hour) + (Compliance Attorney for 279 hours at \$374 per hour) + (Computer Operations Department Manager for 12 hours at \$452 per hour) + (Risk Management Specialist for 183 hours at \$204 per hour) + (Senior Business Analyst for 22 hours at \$281 per hour) + (Senior Risk Management Specialist for 10 hours at \$367 per hour)) = \$158,594 per year.

### **c. Effects on Efficiency, Competition, and Capital Formation**

As previously discussed, the amendments to Rule 17Ad-22 do not alter the status of existing covered clearing agencies.<sup>119</sup> The Commission continues to believe that the amendments will not change the behavior of market participants associated with these entities and will therefore not generate any economic benefits or costs for these entities. Further, even though the amendments do not alter the status of ICEU or LCH SA, the Commission continues to believe that the amendments are likely to generate economic effects for these entities because ICC clears many of the same security-based swap transactions that are cleared by ICEU and LCH SA. Because the amendments are likely to result in uniform regulatory requirements for similar risks at these clearing agencies, they could potentially cause business to shift from ICEU or LCH SA to ICC. This could translate into a loss of economies of scale for ICEU or LCH SA which, in turn, would result in higher clearing fees and higher transaction costs in cleared products. Furthermore, it may reduce the benefits of netting and portfolio margining, which could result in higher margins and consequently transaction costs for clearing participants.

### **2. Economic Effects Related to Future Registrants**

In addition to the effects imposed on the existing set of registered clearing agencies, the amendments to Rule 17Ad-22 will affect the regulation of clearing agencies that register with the Commission in the future. As previously discussed in the CCA Definition proposing release, any clearing agency that provides the services of a CCP or CSD will now be a covered clearing agency.<sup>120</sup> This means that covered clearing agencies will no longer be limited to those that have

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<sup>119</sup> See supra note 21 (discussing the six CCPs and one CSD that, prior to the amendments, were already covered clearing agencies subject to Rule 17Ad-22(e)).

<sup>120</sup> See CCA Definition proposing release, supra note 9, at 70767–68.

been designated by FSOC or that are involved in activities with a complex risk profile. Nor will clearing agencies be excluded when the CFTC is the supervisory agency under the Clearing Supervision Act.

Because the Commission continues to be unable to predict the number of clearing agencies likely to register in the future, much less the number that are likely to be CCPs or CSDs, it continues to be unable to quantify the aggregate economic effects that could flow to future registrants from the amendments to Rule 17Ad-22.<sup>121</sup> The Commission continues to believe that the amendments would generally increase the likelihood that Rule 17Ad-22(e) would apply to a new registrant; in recent years, however, the Commission has received, on average, fewer than one application for registration as a clearing agency per year.<sup>122</sup> Where possible, the Commission has attempted to estimate the benefits and costs it would expect the amendments to Rule 17Ad-22 to have on a single new registrant.

#### **a. Benefits**

As discussed in the CCA Definition proposing release, the Commission continues to believe that the amendments to Rule 17Ad-22 may reduce the costs that potential new providers of clearance and settlement services expect to incur in determining whether they would need to meet the enhanced requirements of covered clearing agencies.<sup>123</sup> Under the amendments, any registered clearing agency that expects to provide the services of a CCP or CSD would also

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<sup>121</sup> The comments received did not provide any additional information regarding the likelihood of new registrant clearing agencies.

<sup>122</sup> The Commission notes that, for new registrants seeking to provide CCP or CSD services, the amendments ensure that Rule 17Ad-22(e) would apply to such registrants, but clearing agencies can perform other functions as well.

<sup>123</sup> See CCA Definition proposing release, supra note 9, at 70768.

expect to be subject to Rule 17Ad-22(e) without requiring additional information about FSOC designation or a Commission determination that its activities have a more complex risk profile. To the extent that this reduces the need for potential entrants that engage in those services to assess whether they are likely to be regulated as covered clearing agencies, the amendments could reduce the costs associated with registration. The Commission continues to believe that a reasonable estimate of cost reduction a single registrant is likely to experience is \$4,208, attributable to reduced legal expenses associated with determining whether or not the registrant will also be regulated as a covered clearing agency.<sup>124</sup>

In the absence of the amendments to Rule 17Ad-22, and without designation by FSOC or engagement in activities with a more complex risk profile, a registered clearing agency would instead be subject to Rule 17Ad-22(d). The amendments therefore increase the likelihood that new entrants into the market for clearance and settlement services would be subject to Rule 17Ad-22(e). Generally, to the extent that Rule 17Ad-22(e) imposes higher risk management standards on potential entrant CCPs and CSDs, the Commission believes the amendments to Rule 17Ad-22 may improve financial stability. As previously discussed, some of this increased stability may come as a result of lower activity, as Rule 17Ad-22(e) causes participants of these new entrants to internalize a greater proportion of the costs that their activity imposes on the financial system, reducing the costs of default when a default event occurs. Increased stability may also come as a result of the higher risk management standards at potential entrants,

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<sup>124</sup> The Commission calculated this reduction in costs as ((Assistant General Counsel for 2 hours at \$478 per hour) + (Compliance Attorney for 3 hours at \$374 per hour) + (Outside Counsel for 5 hours at \$426 per hour = \$4,208. These dollar amounts have been updated since the CCA Definition proposing release to account for inflation since 2016.

effectively lowering the probability that either the entrant clearing agencies or their members default.<sup>125</sup>

### **b. Costs**

As previously discussed, in the absence of these amendments to Rule 17Ad-22, a registered clearing agency that has not been designated by FSOC or subject to a Commission determination would be subject to Rule 17Ad-22(d) rather than Rule 17Ad-22(e). To the extent that the requirements under Rule 17Ad-22(e) impose additional costs on potential entrants who would otherwise have been regulated under Rule 17Ad-22(d), the Commission continues to believe that the amendments may impose additional costs on such potential entrants.

In the CCA Definition proposing release and the CCA Standards adopting release,<sup>126</sup> the Commission estimated specific costs that registered clearing agencies would bear related to holding sufficient qualifying liquid resources under 17 CFR 240.17Ad-22(e)(7) (“Rule 17Ad-22(e)(7)”). Because the organizational and governance structures of covered clearing agencies vary, as do the composition of their members and the products they clear, the Commission remains unable to provide precise estimates of the costs associated with these requirements that potential entrants may bear as a result of the amendments to Rule 17Ad-22. However if a potential entrant resembles the average covered clearing agency, the Commission continues to expect that compliance with Rule 17Ad-22(e)(7) would cost the entrant between \$24 million and

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<sup>125</sup> See CCA Definition proposing release, supra note 9, at 70768; CCA Standards adopting release, supra note 6, at 70881.

<sup>126</sup> See CCA Definition proposing release, supra note 9, at 70768; CCA Standards adopting release, supra note 6, at 70870–73.

\$40 million per year.<sup>127</sup> In addition, the Commission continues to estimate the startup compliance costs associated with policies and procedures for a potential entrant that is not a CSD to be substantially similar to the costs estimated in the CCA Standards adopting release: \$691,309, after adjusting for inflation.<sup>128</sup> Furthermore, 17 CFR 240.17Ad-22(e)(3), (4), (6), (7), (15), and (21) each include elements of review by either a covered clearing agency's board or its management on an ongoing basis. The Commission continues to estimate the cost of ongoing review for these rules at approximately \$40,000 per year for a potential entrant, as estimated in the CCA Standards adopting release.<sup>129</sup>

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<sup>127</sup> To arrive at this range, the Commission divided the maximum and minimum costs associated with compliance estimated in the CCA Standards adopting release by five covered clearing agencies. See CCA Definition proposing release, supra note 9, at 70768.

<sup>128</sup> CCA Standards adopting release, supra note 6, at 70881 & n.757. The total initial cost for an entrant that is not a CSD and does engage in activities with a more complex risk profile was calculated as follows: ((Assistant General Counsel for 428 hours at \$478 per hour) + (Compliance Attorney for 365 hours at \$374 per hour) + (Administrative Assistant for 2 hours at \$82 per hour) + (Computer Operations Department Manager for 300 hours at \$452 per hour) + (Senior Business Analyst for 85 hours at \$281 per hour) + (Senior Risk Management Specialist for 114 hours at \$367 per hour) + (Chief Compliance Office for 102 hours at \$544 per hour) + (Senior Programmer for 53 hours at \$340 per hour) + (Chief Financial Officer for 50 hours at \$1,111 per hour) + (Financial Analyst for 70 hours at \$281 per hour)) = \$691,309. These dollar amounts have been updated since the CCA Definition proposing release to account for inflation since 2016. Because only 17 CFR 240.17Ad-22(e)(11) applies solely to CSDs and many of the other parts of Rule 17Ad-22(e) do not apply to CSDs, the Commission believes the initial cost of an entrant that is a CSD would be lower.

<sup>129</sup> CCA Standards adopting release, supra note 6, at 70880 & n.755. To estimate the cost of board review for these rules, the Commission has used a report by Bloomberg stating that the average director works 250 hours and earns \$251,000, resulting in an estimated \$1000 per hour for board review. See Jeff Green & Hideki Suzuki, *Board Pay Hits Record \$251,000 for 250 Hours*, BLOOMBERG, May 30, 2013, <https://www.bloomberg.com/news/articles/2013-05-30/board-director-pay-hits-record-251-000-for-250-hours>. As a proxy for the cost of management review, the Commission is estimating \$461 per hour, based upon the Director of Compliance cost data from SIFMA. The Commission estimates the total cost of review for each clearing agency as follows: ((Board Review for 32 hours at \$1000 per hour) + (Management

### **c. Effects on Efficiency, Competition, and Capital Formation**

The Commission continues to believe that substantial direct effects on efficiency and capital formation are unlikely to flow from the impact of the amendments to Rule 17Ad-22 on potential entrants; however, potential effects on competition may arise from how the amendments affect the regulatory treatment of registered clearing agencies and the barriers to entry into the market for services provided by CCPs and CSDs.

As discussed in the CCA Definition proposing release, the amendments are likely to result in more consistent regulatory treatment of firms that provide similar services to the securities markets.<sup>130</sup> By imposing Rule 17Ad-22(e) on all CCPs and CSDs, regardless of FSOC designation or their engagement in activities with a more complex risk profile, the amendments mitigate the risk that registered clearing agencies with similar businesses are subject to substantially different regulatory regimes. The Commission continues to believe that more uniform treatment may provide a more level playing field. By contrast, in the absence of the amendments to Rule 17Ad-22, an entrant CCP or CSD that did not engage in activity with a more complex risk profile could initially receive a competitive advantage by being regulated under Rule 17Ad-22(d) until becoming a designated clearing agency and internalizing less of the risk it poses to the financial system.

On the other hand, as previously discussed in the CCA Standards adopting release and the CCA Definition proposing release, costs resulting from regulation under Rule 17Ad-22(e) as

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Review for 16 hours at \$500 per hour)) = \$40,000. The estimate for management review has been updated since the CCA Definition proposing release to account for inflation since 2016.

<sup>130</sup> See CCA Definition proposing release, supra note 9, at 70768.

a result of the amendments may have the effect of raising already high barriers to entry.<sup>131</sup> As the potential entry of new clearing agencies becomes more remote, existing clearing agencies may be able to reduce service quality, restrict the supply of services, or increase fees above marginal cost in an effort to earn economic rents from participants in cleared markets.<sup>132</sup>

### **3. Alternatives to the Amended Definition**

In the CCA Definition proposing release, the Commission proposed including registered clearing agencies that provided the services of a securities settlement system in the definition of “covered clearing agency.” Among the alternatives discussed in the proposing release was a definition that excluded securities settlement services from the definition of a covered clearing agency,<sup>133</sup> which the Commission is adopting in this document for the reasons set forth above in Parts II.A and D.

### **IV. Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (“PRA”) imposes certain requirements on federal agencies in connection with the conducting or sponsoring of any “collection of information.”<sup>134</sup> An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Further, 44 U.S.C. 3507(a) provides that, before adopting or revising a collection of information requirement, an agency must, among other things, publish notice in the Federal Register stating that the agency has

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<sup>131</sup> CCA Definition proposing release, supra note 9, at 70769; see also CCA Standards adopting release, supra note 6, at 70864–66.

<sup>132</sup> See, e.g., Clearing Agency Standards adopting release, supra note 5, at 66263 n.481.

<sup>133</sup> See CCA Definition proposing release, supra note 9, at 70769.

<sup>134</sup> See 44 U.S.C. 3501 et seq.; 44 U.S.C. 3502(3).

submitted the proposed collection of information to the Office of Management and Budget (“OMB”) and setting forth certain required information, including (i) a title for the collection of information; (ii) a summary of the collection of information; (iii) a brief description of the need for the information and the proposed use of the information; (iv) a description of the likely respondents and proposed frequency of response to the collection of information; (v) an estimate of the paperwork burden that shall result from the collection of information; and (vi) notice that comments may be submitted to the agency and director of OMB.<sup>135</sup>

Certain provisions of Rule 17Ad-22(e) impose collection of information requirements under the PRA. The Commission submitted these collections of information to the OMB for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. Because the Commission is revising the respondents under Rule 17Ad-22(e) to account for amended Rule 17Ad-22(a)(5), the Commission will use the same title and control number: “Clearing Agency Standards for Operation and Governance,” OMB Control No. 3235-0695.

The Commission provided notice of the PRA estimates in the CCA Definition proposing release and received no comments in response. The Commission continues to believe that the PRA estimates set forth in the CCA Definition proposing release are correct, except where changes are noted below.

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<sup>135</sup> See 44 U.S.C. 3507(a)(1)(D); see also 5 CFR 1320.5(a)(1)(iv).

### **A. Summary of Collection of Information and Use of Information**<sup>136</sup>

As described above, the Commission is adopting amendments to three definitions in Rules 17Ad-22(a) and is not altering any of the requirements in Rule 17Ad-22(e).<sup>137</sup> Accordingly, the Collection of Information and Use of Information for Rule 17Ad-22(e) previously set forth in the CCA Standards adopting release and the CCA Definition proposing release remain unchanged.<sup>138</sup>

### **B. Respondent Clearing Agencies**

The requirements in Rule 17Ad-22(e) impose a PRA burden on covered clearing agencies. Under the prior definition of “covered clearing agency” adopted in 2016, Rule 17Ad-22(e) applied to five registered clearing agencies, including four registered clearing agencies that provide CCP services and one registered clearing agency that provides CSD services, and the Commission estimated that two additional entities might seek to register with the Commission. Accordingly, the Commission estimated that the majority of the requirements under Rule 17Ad-22(e) would have seven respondents, of which (i) six would be CCPs and one would be a CSD, and (ii) two would be security-based swap clearing agencies. The Commission further clarified that 17 CFR 240.17Ad-22(e)(6) (“Rule 17Ad-22(e)(6)”) would only have six respondents because it only applies to CCPs, 17 CFR 240.17Ad-22(e)(11) (“Rule 17Ad-22(e)(11)”) would only have one respondent because it only applies to CSDs, and 17 CFR 240.17Ad-22(e)(14)

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<sup>136</sup> The Commission notes that the policies and procedures required by Rule 17Ad-22(e) would also be used by the Commission as part of its ongoing efforts to monitor and enforce compliance with the federal securities laws through, among other things, examinations and inspections.

<sup>137</sup> See supra Parts I and II.

<sup>138</sup> CCA Standards adopting release, supra note 6, at 70881–90; CCA Definition proposing release, supra note 9, at 70769–83.

(“Rule 17Ad-22(e)(14)”) would only have two respondents because it only applies to security-based swap clearing agencies.

Under the amended definition of “covered clearing agency” adopted in this document, the Commission estimates that Rule 17Ad-22(e) now applies to seven registered clearing agencies, including six registered clearing agencies that provide CCP services and one registered clearing agency that provides CSD services.<sup>139</sup> The Commission continues to believe that one additional entity might seek to register with the Commission in the next three years.<sup>140</sup> Accordingly, the Commission estimates that a majority of the requirements under Rule 17Ad-22(e) have eight respondents, of which (i) seven are CCPs and one is a CSD, and (ii) three are security-based swap clearing agencies. The Commission also notes that Rule 17Ad-22(e)(6) now has seven respondents because it applies to CCPs, Rule 17Ad-22(e)(11) continues to have one respondent because it only applies to CSDs, and Rule 17Ad-22(e)(14) now has three respondents because it only applies to security-based swap clearing agencies.

The PRA analysis for seven of the eight respondents appears in the CCA Standards adopting release. Below, the Commission provides a PRA analysis for the one additional respondent subject to Rule 17Ad-22(e) under the amended definition of “covered clearing agency,” thereby reflecting the incremental annual reporting and recordkeeping burdens resulting

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<sup>139</sup> The additional respondent clearing agency subject to Rule 17Ad-22(e) under the amended definition of “covered clearing agency” was a registered clearing agency subject to Rule 17Ad-22(d).

<sup>140</sup> In 2016, the Commission registered a new security-based swap clearing agency that was not previously a registered clearing agency.

from the amended definition. Because the one remaining respondent provides CCP services and does not provide CSD services, the analysis below does not include Rule 17Ad-22(e)(11).<sup>141</sup>

### **C. Total Annual Reporting and Recordkeeping Burdens**

The amendments adopted in this document increase by one the estimated number of respondent clearing agencies for some aspects of Rule 17Ad-22(e), as previously discussed. The amendments do not affect the Commission’s rationales and estimates for the annual reporting and recordkeeping burdens under Rule 17Ad-22(e) as set forth in the CCA Standards adopting release.<sup>142</sup> Below, the Commission therefore summarizes the initial and annual burden estimates for each rule that the Commission expects will impose a burden on a new respondent clearing agency subject to Rule 17Ad-22(e) under the amended definition of “covered clearing agency” and then provides the corresponding increase in the total burden estimate that results under Rule 17Ad-22(e).

#### **1. Initial and Annual Burden Estimates**

For 17 CFR 240.17Ad-22(e)(1), the Commission continues to estimate that a respondent clearing agency incurs an initial burden of eight hours and an annual burden of three hours.<sup>143</sup>

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<sup>141</sup> In addition, in the CCA Definition proposing release, the Commission included 17 CFR 240.17Ad-22(c)(1) (“Rule 17Ad-22(c)(1)”) in the PRA discussion. Because the number of respondents for Rule 17Ad-22(c)(1) is unchanged, the analysis below does not include Rule 17Ad-22(c)(1).

<sup>142</sup> See CCA Standards adopting release, supra note 6, at 70891–99.

<sup>143</sup> These figures were calculated as follows: Assistant General Counsel for 2 hours + Compliance Attorney for 6 hours = 8 hours of initial burden; Compliance Attorney for 3 hours = 3 hours of annual burden.

For 17 CFR 240.17Ad-22(e)(2), the Commission continues to estimate that a respondent clearing agency incurs an initial burden of 25 hours and an annual burden of five hours.<sup>144</sup>

For 17 CFR 240.17Ad-22(e)(3), the Commission continues to estimate that a respondent clearing agency incurs an initial burden of 57 hours and an annual burden of 49 hours.<sup>145</sup>

For 17 CFR 240.17Ad-22(e)(4), the Commission continues to estimate that a respondent clearing agency incurs an initial burden of 219 hours and an annual burden of 62 hours.<sup>146</sup>

For 17 CFR 240.17Ad-22(e)(5), the Commission continues to estimate that a respondent clearing agency incurs an initial burden of 42 hours and an annual burden of 36 hours.<sup>147</sup>

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<sup>144</sup> These figures were calculated as follows: Assistant General Counsel for 14 hours + Compliance Attorney for 11 hours = 25 hours of initial burden; Compliance Attorney for 5 hours = 5 hours of annual burden.

<sup>145</sup> These figures were calculated as follows: Assistant General Counsel for 25 hours + Compliance Attorney for 18 hours + (Senior Risk Management Specialist for 7 hours + Computer Operations Manager for 7 hours = 57 hours of initial burden; Compliance Attorney for 8 hours + Administrative Assistant for 3 hours + Senior Business Analyst for 5 hours + Risk Management Specialist for 33 hours = 49 hours of annual burden.

<sup>146</sup> These figures were calculated as follows: Assistant General Counsel for 74 hours + Compliance Attorney for 45 hours + Senior Risk Management Specialist for 30 hours + Computer Operations Manager for 45 hours + Chief Compliance Officer for 15 hours + Senior Programmer for 10 hours = 219 hours of initial burden; Compliance Attorney for 26 hours + Administrative Assistant for 3 hours + Senior Business Analyst for 3 hours + Risk Management Specialist for 30 hours = 62 hours of annual burden.

The CCA Definition proposing release incorrectly stated the calculations for the initial burden (as 200 hours) and annual burden (as 60 hours). These estimates have been corrected for this release and reflect the PRA estimates that the Commission provided to OMB for this rulemaking.

<sup>147</sup> These figures were calculated as follows: Assistant General Counsel for 16 hours + Compliance Attorney for 12 hours + Senior Risk Management Specialist for 7 hours + Computer Operations Manager for 7 hours = 42 hours of initial burden; Compliance Attorney for 6 hours + Risk Management Specialist for 30 hours = 36 hours of annual burden.

For Rule 17Ad-22(e)(6), the Commission continues to estimate that a respondent clearing agency incurs an initial burden of 180 hours and an annual burden of 60 hours.<sup>148</sup>

For Rule 17Ad-22(e)(7), the Commission continues to estimate that a respondent clearing agency incurs an initial burden of 330 hours and an annual burden of 128 hours.<sup>149</sup>

For 17 CFR 240.17Ad-22(e)(8), (9), (10), and (12), the Commission continues to estimate, for each rule, that a respondent clearing agency incurs an initial burden of 12 hours and an annual burden of five hours.<sup>150</sup>

For 17 CFR 240.17Ad-22(e)(13), the Commission continues to estimate that a respondent clearing agency incurs an initial burden of 41 hours and an annual burden of seven hours.<sup>151</sup>

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<sup>148</sup> These figures were calculated as follows: Assistant General Counsel for 50 hours + Compliance Attorney for 40 hours + Senior Risk Management Specialist for 25 hours + Computer Operations Manager for 40 hours + Chief Compliance Officer for 15 hours + Senior Programmer for 10 hours = 180 hours of initial burden; Compliance Attorney for 24 hours + Administrative Assistant for 3 hours + Senior Business Analyst for 3 hours + Risk Management Specialist for 30 hours = 60 hours of annual burden.

<sup>149</sup> These figures were calculated as follows: Assistant General Counsel for 95 hours + Compliance Attorney for 85 hours + Senior Risk Management Specialist for 45 hours + Computer Operations Manager for 60 hours + Chief Compliance Officer for 30 hours + Senior Programmer for 15 hours = 330 hours of initial burden; Compliance Attorney for 48 hours + Administrative Assistant for 5 hours + Senior Business Analyst for 5 hours + Risk Management Specialist for 60 hours + Senior Risk Management Specialist for 10 hours = 128 hours of annual burden.

<sup>150</sup> These figures were calculated as follows: Assistant General Counsel for 2 hours + Compliance Attorney for 6 hours + Senior Business Analyst for 2 hours + Computer Operations Manager for 2 hours = 12 hours of initial burden; Compliance Attorney for 5 hours = 5 hours of annual burden.

<sup>151</sup> These figures were calculated as follows: Assistant General Counsel for 6 hours + Compliance Attorney for 11 hours + Senior Business Analyst for 12 hours + Computer Operations Manager for 12 hours = 41 hours of initial burden; Compliance Attorney for 7 hours = 7 hours of annual burden.

The CCA Definition proposing release incorrectly stated the calculations for the initial burden (as 60 hours) and annual burden (as 9 hours). These estimates have been corrected for

For Rule 17Ad-22(e)(14), the Commission continues to estimate that a respondent clearing agency incurs an initial burden of 36 hours and an annual burden of six hours.<sup>152</sup>

For 17 CFR 240.17Ad-22(e)(15), the Commission continues to estimate that a respondent clearing agency incurs an initial burden of 210 hours and an annual burden of 48 hours.<sup>153</sup>

For 17 CFR 240.17Ad-22(e)(16), the Commission continues to estimate that a respondent clearing agency incurs an initial burden of 20 hours and an annual burden of six hours.<sup>154</sup>

For 17 CFR 240.17Ad-22(e)(17), the Commission continues to estimate that a respondent clearing agency incurs an initial burden of 28 hours and an annual burden of six hours.<sup>155</sup>

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this release and reflect the PRA estimates that the Commission provided to OMB for this rulemaking.

<sup>152</sup> These figures were calculated as follows: Assistant General Counsel for 12 hours + Compliance Attorney for 10 hours + Computer Operations Manager for 7 hours + Senior Business Analyst for 7 hours = 36 hours of initial burden; Compliance Attorney for 6 hours = 6 hours of annual burden.

<sup>153</sup> These figures were calculated as follows: Assistant General Counsel for 40 hours + Compliance Attorney for 30 hours + Computer Operations Manager for 10 hours + Senior Business Analyst for 10 hours + Financial Analyst for 70 hours + Chief Financial Officer for 50 hours = 210 hours of initial burden; Compliance Attorney for 42 hours + Administrative Assistant for 3 hours + Senior Business Analyst for 3 hours = 48 hours of annual burden.

<sup>154</sup> These figures were calculated as follows: Assistant General Counsel for 4 hours + Compliance Attorney for 8 hours + Senior Business Analyst for 4 hours + Computer Operations Manager for 4 hours = 20 hours of initial burden; Compliance Attorney for 6 hours = 6 hours of annual burden.

<sup>155</sup> These figures were calculated as follows: Assistant General Counsel for 4 hours + Compliance Attorney for 8 hours + Computer Operations Manager for 6 hours + Senior Business Analyst for 4 hours + Chief Compliance Officer for 4 hours + Senior Programmer for 2 hours = 28 hours of initial burden; Compliance Attorney for 6 hours = 6 hours of annual burden.

For 17 CFR 240.17Ad-22(e)(18), (19), and (20), the Commission continues to estimate, for each rule, that a respondent clearing agency incurs an initial burden of 44 hours and an annual burden of seven hours.<sup>156</sup>

For 17 CFR 240.17Ad-22(e)(21), the Commission continues to estimate that a respondent clearing agency incurs an initial burden of 32 hours and an annual burden of 11 hours.<sup>157</sup>

For 17 CFR 240.17Ad-22(e)(22), the Commission continues to estimate that a respondent clearing agency incurs an initial burden of 24 hours and an annual burden of five hours.<sup>158</sup>

For 17 CFR 240.17Ad-22(e)(23), the Commission continues to estimate that a respondent clearing agency incurs an initial burden of 138 hours and an annual burden of 34 hours.<sup>159</sup>

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<sup>156</sup> These figures were calculated as follows: Assistant General Counsel for 10 hours + Compliance Attorney for 7 hours + Computer Operations Manager for 15 hours + Senior Business Analyst for 5 hours + Chief Compliance Officer for 5 hours + Senior Programmer for 2 hours = 44 hours of initial burden; Compliance Attorney for 7 hours = 7 hours of annual burden.

<sup>157</sup> These figures were calculated as follows: Assistant General Counsel for 10 hours + Compliance Attorney for 7 hours + Computer Operations Manager for 10 hours + Senior Business Analyst for 5 hours = 32 hours of initial burden; Compliance Attorney for 5 hours + Administrative Assistant for 3 hours + Senior Business Analyst for 3 hours = 11 hours of annual burden.

<sup>158</sup> These figures were calculated as follows: Assistant General Counsel for 2 hours + Compliance Attorney for 6 hours + Computer Operations Manager for 7 hours + Senior Business Analyst for 2 hours + Chief Compliance Officer for 5 hours + Senior Programmer for 2 hours = 24 hours of initial burden; Compliance Attorney for 5 hours = 5 hours of annual burden.

<sup>159</sup> These figures were calculated as follows: Assistant General Counsel for 38 hours + Compliance Attorney for 24 hours + Computer Operations Manager for 32 hours + Senior Business Analyst for 18 hours + Chief Compliance Officer for 18 hours + Senior Programmer for 8 hours = 138 hours of initial burden; Compliance Attorney for 34 hours = 34 hours of annual burden.

## 2. Total Burden Estimate

For the rules above, the Commission estimates that a respondent clearing agency incurs a total initial burden of 1,570 hours and an annual burden of 507 hours.<sup>160</sup>

### D. Collection of Information is Mandatory

The collection of information requirements for the rules above continue to be mandatory.

### E. Confidentiality

As required under Rule 17Ad-22(e), the policies and procedures developed pursuant to the rules above would be communicated, as applicable, to the participants of each respondent clearing agency and the public. A respondent clearing agency is also required to preserve such policies and procedures in accordance with, and for the periods specified in, 17 CFR 240.17a-1 and 240.17a-4(e)(7). To the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential subject to the provisions of applicable law.<sup>161</sup>

## V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (“RFA”) requires the Commission, in promulgating rules, to consider the impact of those rules on small entities.<sup>162</sup> Section 603(a) of the Administrative

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<sup>160</sup> The Commission notes that these estimates are slightly higher than those stated in the CCA Definition proposing release after correcting for the errors previously noted above. See supra notes 146 and 151.

<sup>161</sup> See, e.g., 5 U.S.C. 552. Exemption 4 of the Freedom of Information Act provides an exemption for trade secrets and commercial or financial information obtained from a person and privileged or confidential. See 5 U.S.C. 552(b)(4). Exemption 8 of the Freedom of Information Act provides an exemption for matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. See 5 U.S.C. 552(b)(8).

<sup>162</sup> See 5 U.S.C. 601 et seq.

Procedure Act,<sup>163</sup> as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on “small entities.”<sup>164</sup> The Commission certified in the CCA Definition proposing release, pursuant to Section 605(b) of the RFA, that the proposed rules would not, if adopted, have a significant impact on a substantial number of small entities.<sup>165</sup> The Commission received no comments on this certification.

### **A. Registered Clearing Agencies**

The amendments to Rule 17Ad-22 apply to registered clearing agencies that are CCPs and CSDs. For the purposes of Commission rulemaking and as applicable to the amendments to Rule 17Ad-22, a small entity includes, when used with reference to a clearing agency, a clearing agency that (i) compared, cleared, and settled less than \$500 million in securities transactions during the preceding fiscal year, (ii) had less than \$200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or at any time that it has been in business, if shorter), and (iii) is not affiliated with any person (other than a natural person) that is not a small business or small organization.<sup>166</sup>

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<sup>163</sup> 5 U.S.C. 603(a).

<sup>164</sup> Section 601(b) of the RFA permits agencies to formulate their own definitions of “small entities.” See 5 U.S.C. 601(b). The Commission has adopted definitions for the term “small entity” for the purposes of rulemaking in accordance with the RFA. These definitions, as relevant to this rulemaking, are set forth in 17 CFR 240.0-10.

<sup>165</sup> See 5 U.S.C. 605(b).

<sup>166</sup> See 17 CFR 240.0-10(d).

Based on the Commission’s existing information about the clearing agencies currently registered with the Commission,<sup>167</sup> the Commission believes that all such registered clearing agencies exceed the thresholds defining “small entities” set out above. While other clearing agencies may emerge and seek to register as clearing agencies with the Commission, the Commission does not believe that any such entities would be “small entities” as defined in 17 CFR 240.0-10(d).<sup>168</sup> Accordingly, the Commission believes that any such registered clearing agencies will exceed the thresholds for “small entities” set forth in 17 CFR 240.0-10.

## **B. Certification**

For the reasons described above, the Commission certifies that the amendments to Rule 17Ad-22 will not have a significant economic impact on a substantial number of small entities.

## **VI. Other Matters**

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application

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<sup>167</sup> In 2018, DTCC processed \$1.854 quadrillion in financial transactions. Within DTCC, DTC settled \$122.6 trillion of securities and held securities valued at \$52.2 trillion, NSCC processed an average daily value of \$1269.7 billion in equity securities, and FICC cleared \$1.165 quadrillion of transactions in government securities and \$58.7 trillion of transactions in agency mortgage-backed securities. DTCC, 2018 Annual Report, <http://www.dtcc.com/annuals/2018/#/financial-performance>. OCC cleared more than 5.2 billion contracts and held margin of \$111.8 billion at the end of 2018. OCC, 2018 Annual Report, <https://www.theocc.com/components/docs/about/annual-reports/occ-2018-annual-report.pdf>. In addition, Intercontinental Exchange (“ICE”) averaged daily trade volume of over 6.2 million and revenues of \$5 billion in 2018. See ICE at a glance, [https://www.theice.com/publicdocs/ICE\\_at\\_a\\_glance.pdf](https://www.theice.com/publicdocs/ICE_at_a_glance.pdf). LCH SA cleared €612 billion in 2018 with clearing fee revenue of €19.9 million. LCH SA, 2018 Financial Statements, [https://www.lch.com/system/files/media\\_root/LCH%20Group%20Holdings%20Limited%20-%202018%20Financial%20Statements.pdf](https://www.lch.com/system/files/media_root/LCH%20Group%20Holdings%20Limited%20-%202018%20Financial%20Statements.pdf).

<sup>168</sup> The Commission based this determination on its review of public sources of financial information about registered clearing agencies. In addition, Parts III (Economic Analysis) and IV (Paperwork Reduction Act) above discuss, among other things, the economic impact, including the estimated compliance costs and burdens, of the amended definition.

of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated these rules as not a major rule, as defined by 5 U.S.C. 804(2).

## **VII. Statutory Authority**

Pursuant to the Exchange Act, particularly Section 17A thereof, 15 U.S.C. 78q-1, and Section 805 of the Clearing Supervision Act, 12 U.S.C. 5464, the Commission is adopting amendments to Rule 17Ad-22.

### **List of Subjects in 17 CFR Part 240**

Reporting and recordkeeping requirements, Securities.

### **Text of Amendment**

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

### **PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et. seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

\* \* \* \* \*

Section 240.17Ad-22 is also issued under 12 U.S.C. 5461 *et seq.*

\* \* \* \* \*

2. Amend § 240.17Ad-22 by revising paragraphs (a)(3), (5), and (16) to read as follows:

**§ 240.17Ad-22 Standards for clearing agencies.**

(a) \* \* \*

(3) *Central securities depository* means a clearing agency that is a securities depository as described in Section 3(a)(23)(A) of the Act (15 U.S.C. 78c(a)(23)(A)).

\* \* \* \* \*

(5) *Covered clearing agency* means a registered clearing agency that provides the services of a central counterparty or central securities depository.

\* \* \* \* \*

(16) *Sensitivity analysis* means an analysis that involves analyzing the sensitivity of a model to its assumptions, parameters, and inputs that:

(i) Considers the impact on the model of both moderate and extreme changes in a wide range of inputs, parameters, and assumptions, including correlations of price movements or returns if relevant, which reflect a variety of historical and hypothetical market conditions;

(ii) Uses actual portfolios and, where applicable, hypothetical portfolios that reflect the characteristics of proprietary positions and customer positions;

(iii) Considers the most volatile relevant periods, where practical, that have been experienced by the markets served by the clearing agency; and

(iv) Tests the sensitivity of the model to stressed market conditions, including the market conditions that may ensue after the default of a member and other extreme but plausible conditions as defined in a covered clearing agency's risk policies.

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By the Commission.

Date: April 9, 2020.

Vanessa A. Countryman,

Secretary.